

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.

2015 OCT - 9 PM 2:25
CIRCUIT COURT

AMENDED ANSWER TO COMPLAINT
AND COUNTERCLAIM

Comes now the Defendant, Northstar Energy Corporation ("Northstar"), by its counsel Stephen L. Thompson, and by way of an Amended Answer in response to the Complaint by Riley Natural Gas Company ("RNG" or "Plaintiff") would say as follows:

1. In response to Paragraphs 1 of the Plaintiff's Complaint, Northstar states that the averments are conclusory and unsupported by any specific allegations and therefore Northstar does not believe it is required to respond. To the extent that a response is deemed necessary, Northstar denies the allegation and demands strict proof thereof.

2. With regard to the allegations contained in Paragraph 2 of the Plaintiff's Complaint, Northstar admits that RNG seeks a declaratory judgment from the Court against Northstar. As to the remaining allegations contained in Paragraph 2 Northstar is not in possession of the agreement referred to therein and is without sufficient information to either admit or deny the same and demands strict proof thereof.

3. Northstar is without sufficient information to either admit or deny the allegations contained in Paragraph 3 of the Plaintiff's Complaint as it is not in possession of the agreement referred to and demands strict proof thereof.

4. Northstar admits the allegations contained in Paragraphs 4, 5, 6 and 7 of the Plaintiff's Complaint .

5. With regard to the allegations contained in Paragraph 8 of the Plaintiff's Complaint, Northstar admits that RNG is engaged in the business of buying, selling, and marketing natural gas, including on behalf of natural gas producing companies like Northstar. Northstar is without sufficient information to either admit or deny that RNG is not a producer of natural gas and demands strict proof thereof.

6. Northstar denies the allegations contained in Paragraph 9 of the Plaintiff's Complaint as it is no longer engaged in the business of natural gas production.

7. Northstar is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 10 of the Plaintiff's Complaint as it is not in possession of the Agreement referred to and is otherwise without sufficient knowledge and demands strict proof thereof.

8. Northstar is without sufficient knowledge to either admit or deny the allegations contained in Paragraphs 11, 12, 13 and 14 of the Plaintiff's Complaint and demands strict proof thereof.

9. Northstar is without sufficient knowledge to either admit or deny the allegations Contained in Paragraph 15 of the Plaintiff's Complaint and would say that the Agreement referred to as Exhibit A was not attached to the Complaint served upon Northstar.

10. With regard to the allegations contained in Paragraph 16 of the Plaintiff's Complaint Northstar is without sufficient knowledge to either admit or deny that, without the agreements and commitments by Northstar, RNG would not have acquired DTI Gateway firm transportation capacity on behalf of Northstar and demands strict proof thereof. Northstar admits

the remaining allegations contained in Paragraph 16 and were representations to Northstar by representatives of RNG.

11. Northstar is without sufficient knowledge to either admit or deny the allegations contained in Paragraphs 17, 18, 19, 20, 21, 22 and 23 of the Plaintiff's Complaint as no Exhibits were attached to the Complaint that was served upon Northstar and Northstar demands strict proof thereof.

12. Northstar denies the allegations contained in Paragraph 24 of the Plaintiff's Complaint and demands strict proof thereof.

13. With regard to the allegations contained in Paragraphs 25, 26, 27, 28 and 29 of the Plaintiff's Complaint Northstar is without knowledge to either admit or deny the allegations as it does not have a copy of the Exhibit B and no Exhibits were attached to the Complaint that was served upon Northstar. Further, Northstar denies that Plaintiff is entitled to any relief from Northstar and demands strict proof thereof.

14. Northstar admits the allegations contained in Paragraph 30 of the Plaintiff's Complaint, but it is without knowledge or information to admit that Plaintiff is entitled to recover the same from Northstar and therefore denies that Plaintiff is entitled to any relief from Northstar and demands strict proof thereof.

15. With regard to the allegations contained in Paragraphs 31, 32, 33 of the Plaintiff's Complaint, Northstar is without knowledge to either admit or deny the allegations as it does not have a copy of the Exhibit B and no Exhibits were attached to the Complaint that was served upon Northstar. Further, Northstar denies that Plaintiff is entitled to any relief from Northstar and demands strict proof thereof.

16. With regard to Paragraph 34 of the Plaintiff's Complaint, the Defendant incorporates its answer to Paragraphs 1 through 33 the same as if fully set forth herein.

17. With regard to the allegations contained in Paragraph 35 of the Plaintiff's Complaint, Northstar is without knowledge to either admit or deny the allegations as it does not have a copy of the Exhibit B and no Exhibits were attached to the Complaint that was served upon Northstar. Further, Northstar demands strict proof thereof.

18. With regard to Paragraph 36 of the Plaintiff's Complaint, the Defendant incorporates its answer to Paragraphs 1 through 35 the same as if fully set forth herein.

19. With regard to the allegations contained in Paragraph 37 of the Plaintiff's Complaint, Northstar is without knowledge to either admit or deny the allegations as it does not have a copy of the Exhibit B and no Exhibits were attached to the Complaint that was served upon Northstar. Further, Northstar demands strict proof thereof.

20. Northstar denies the allegations contained in Paragraph 38 of the Plaintiff's Complaint and demands strict proof thereof.

21. Unless expressly admitted herein, Northstar denies all remaining allegations contained in Plaintiff's Complaint.

22. Northstar denies each and every allegation not specifically admitted herein.

23. Northstar denies that the Plaintiff is entitled to any relief whatsoever from this Court.

24. Northstar denies that the Plaintiff has suffered any damages, and denies that the Plaintiff is entitled to recover of or from the Defendant in any amount.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against the Defendant upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Defendant reserves the right to amend its answer and affirmative and other defenses to assert any other matter constituting an avoidance, affirmative defense and/or equitable bar to recovery if investigation, discovery, and should further information warrant such amendment, and further, to assert any such claims, counterclaims, cross-claims, other claims or matters of law as investigation and discovery may prove applicable.

THIRD AFFIRMATIVE DEFENSE

Defendant asserts that the Plaintiff's Complaint is barred by the equitable or affirmative defense of unclean hands and that Plaintiff's claims are contrary to the facts.

FOURTH AFFIRMATIVE DEFENSE

Northstar asserts the affirmative defense or equitable bar to recovery of the impossibility of performance regarding Plaintiff's Agreement.

FIFTH AFFIRMATIVE DEFENSE

To the extent supported by the facts of the case, Defendant asserts the affirmative defense of intervening and superseding causes.

SIXTH AFFIRMATIVE DEFENSE

To the extent supported by the facts of the case, Defendant asserts and relies upon the doctrine of unavoidable consequences.

SEVENTH AFFIRMATIVE DEFENSE

This Defendant affirmatively states that if the Plaintiff sustained the damages of which it complains, all of which are specifically denied, those alleged damages were proximately caused by, or substantially contributed to by reason of the actions and conduct of other persons, firms or corporations, and not by reason of the actions and conduct on the part of this Defendant.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims against this Defendant are barred by reason of the equitable bar to recovery, of waiver and/or estoppel.

NINTH AFFIRMATIVE DEFENSE

Defendant asserts that the Plaintiff's Complaint is barred by the affirmative defense of failure to mitigate and that any recovery by the Plaintiff must be reduced by the amount the Plaintiff would have recovered by way of mitigation.

TENTH AFFIRMATIVE DEFENSE

By way of an additional affirmative defense to the Plaintiff's claims the Defendant incorporates by reference its Counterclaim hereinafter set forth.

ELEVENTH AFFIRMATIVE DEFENSE

By way of an additional affirmative defense to the Plaintiff's claims the Defendant asserts that any recovery to which the Plaintiff may be entitled to recover is subject to a setoff for such amounts as the Defendant is entitled to recover of and from the Plaintiff upon its Counterclaim which is hereinafter set forth.

WHEREFORE, Defendant Northstar Energy Corporation, Inc., prays that it have judgment awarded in its favor and be awarded its reasonable costs, expenses, and attorney fees occurred in the defense of this action, together with such other and further relief as this Court may deem appropriate.

COUNTERCLAIM

Comes now the Defendant, Northstar Energy Corporation ("Northstar"), by its counsel Stephen L. Thompson, and for its Counterclaim against Riley Natural Gas Company ("RNG") would say as follows:

COUNT ONE

1. Northstar incorporates by reference the admissions, denials and the defenses of its Answer to the Complaint as if the same were set forth herein verbatim.

2. By this instant civil action, RNG seeks:

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 the Court deems appropriate.

3. On or about August 1, 2008, Northstar as "Seller" and RNG as "Purchaser" entered into an agreement wherein RNG agreed to purchase and receive and Northstar agreed to sell and deliver natural gas in accordance with the Term Sheet attached thereto as Exhibit A (the "Agreement.")

4. The Agreement stated that:

"Seller shall be responsible and liable for all charges of any kind upstream of the delivery Point. . . In addition, charges downstream of any Delivery Point(s) shall be borne as follows:

- (a) for any Delivery Point(s) not into DTI's Appalachia Gateway Project facilities, Purchaser shall be responsible and liable for payment of all charges that are Downstream of such Delivery Point(s); and
- (b) for any 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."

AGREEMENT, ¶ 2.

5. As of August 1, 2008, the Term Sheet associated with the Agreement provided

a Management Fee of \$.08/dth per each dth of Firm Transportation capacity that RNG is able to reserve for Northstar as the Seller.

6. On or about June 13, 2012, Dominion Transmission (“DTI”) proposed to customers delivering gas into its Appalachian Gateway Project Facilities (hereinafter the “Facilities”) a number of options for payment of the transportation charges which they intended to impose upon those delivering their gas into those new Facilities.

7. Believing that the Delivery Point for the sale of its gas production to RNG would be directly into the Facilities, on June 28, 2012, Northstar advised RNG that it had elected the Deferred Option which would provide for a Dominion Appalachian Gateway Fee in the amount of \$.495/dt for 3,500 dt per day from September, 2012 through September, 2022.

8. The point of sale and Delivery Point for the sale of the gas production from Northstar to RNG was and is Meter #215530, known as the Northstar Energy Corporation Carbon Fuel interconnection into Dominion Transmission Pipeline identified as TL-263 in Kanawha County, West Virginia at Slaughter’s Creek, also sometimes designated by RNG as being located at Chelyan.

9. In other words, the Delivery Point for the sale of Northstar’s gas to RNG is not into DTI’s newly-constructed (as of 2012) Facilities, but is instead into Dominion Transmission Pipeline TL-263, at the historic meter site set forth in paragraph 8 above.

10. Accordingly, under the provisions of paragraph numbered 2 (a) of the Agreement, RNG, and not Northstar, is responsible and liable for payment of all charges that are downstream of the Delivery Point, including those set forth in Paragraph 7 above.

11. Since September, 2012, RNG has been wrongfully imposing upon and collecting from the proceeds of gas sold by Northstar to RNG Dominion Transmission's Appalachian Gateway Fees in the amount of \$.495/dt for 3,500 dt per day.

12. The actions of RNG constitute a repudiation and breach of the Agreement.

13. Northstar is entitled to an accounting of and from RNG accounting of all Dominion Transmission's Appalachian Gateway Fees which were charged to Northstar.

14. Northstar is entitled to recover judgment of and from RNG for all of the Dominion Transmission's Appalachian Gateway Fees in the amount of \$.495/dt for 3,500 dt per day which have been deducted from the proceeds of gas sold by Northstar to RNG.

15. In addition, Northstar is entitled to a declaration of and from this Court that by reason of the repudiation and breach of the Agreement by RNG the Agreement is terminated and is at an end, and Northstar should be excused from any further performance of the Agreement.

COUNT TWO

16. Defendant incorporates by reference all of the facts and allegations of Counts One and Two of the Defendant's Counterclaim hereof as if the same were fully set forth herein verbatim.

17. RNG presents and markets itself as an expert in managing physical delivery and the marketing of producers' natural gas supplies.

18. In 2011, as a part of the sales of its gas to RNG, and the delivery of such gas thereafter by RNG to DTI, DTI notified Northstar that it will no longer accept Northstar's gas which was produced and delivered by Northstar to RNG, and then delivered by RNG to DTI through the Slaughter's Creek, Kanawha County, West Virginia, delivery point set forth in paragraph numbered 8 hereof, due to its "btu" value.

19. Notwithstanding such advice, the “btu” value of the gas has been consistent for the past 13 years prior to Northstar being advised of the rejection of its gas.

20. Northstar notified RNG, the purchaser and marketer of Northstar’s gas, of DTI’s new “btu” requirement, and was caused to expend funds to have its gas “stripped” prior to the sale of the gas to RNG.

21. Northstar believes that its gas could have been sold to other markets but that RNG failed to find alternative purchasers for the gas.

22. By reason of such failure to market its gas in a commercially reasonable manner, Northstar was forced to incur the costs of making the gas marketable for RNG so that RNG could then sell the gas to DTI without any expenditures on its part.

23. During the month of November, 2015, Northstar was no longer able to bear the cost to have its gas “stripped” and thereby given a lower “btu” value, and gave notice to RNG and DTI that it was shutting down operations because it could no longer meet DTI’s demands.

24. Northstar has been injured and damaged by reason of the actions and conduct of RNG and is entitled to recover of and from RNG damages for such losses and damages.

COUNT THREE

25. Defendant incorporates by reference all of the facts and allegations of Counts One through Three of the Defendant’s Counterclaim hereof as if the same were fully set forth herein verbatim.

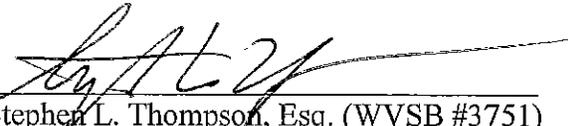
26. On December 7, 2015, Northstar, by its counsel, acknowledged receipt that day of RNG’s Term Sheet dated December 1, 2015 and requested that the Agreement be terminated in accordance with the provisions of paragraph numbered 3 of the Agreement. In accordance with the provisions of paragraph numbered 3 of the said Agreement, termination shall be effective on

the last day of the third calendar month following the month that RNG received Northstar's written notice.

27. Northstar therefore seeks a declaration that the Agreement dated August 1, 2008 is terminated and which shall become effective on the last day of the third calendar month following the month that RNG received Northstar's written notice.

WHEREFORE, having now answered the Plaintiff's complaint, the Defendant prays that the same be dismissed and that it do recover its costs and fees expended in and about its defense; that it do recover upon its Counterclaim against the Plaintiff by (1) excusing Northstar from performance of the Agreement by reason of RNG's default of the same; (2) an accounting by RNG and recovery by Northstar of the excessive fees that have been deducted from Northstar's payments of gas purchased by RNG; (3) recovery by Northstar of an award of damages by reason of the failure by RNG to market and sell the gas produced by Northstar in a commercially reasonable manner; (4) a declaration that the Agreement dated August 1, 2008 is terminated and which shall become effective on the last day of the third calendar month following the month that RNG received Northstar's written notice, and (5) for such other and further relief as the Court deems appropriate. Defendant demands a jury on all issues so triable.

NORTHSTAR ENERGY CORPORATION
a West Virginia corporation
By Counsel



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Civil Action No. 15-C-405-3

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CERTIFICATE OF SERVICE

I, Stephen L. Thompson, do hereby certify that I have served the foregoing AMENDED ANSWER TO COMPLAINT AND COUNTERCLAIM upon the following by depositing a true and exact copy thereof in envelopes, this 8TH day of December, 2015, addressed as follows:

Lori A. Dawkins, Esq.
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2015 DEC 9 10 25
CIRCUIT COURT
HARRISON COUNTY


Stephen L. Thompson