



JAMES E. (JIM) NUGENT, Chairman
 MARY SCOTT NABERS, Commissioner
 BARRY WILLIAMSON, Commissioner

LEGAL DIVISION

CAROLE VOGEL
 Director
 (512) 463-7933
 JAMIE NIELSON
 Asst. Director, Oil and Gas
 (512) 463-6924
 FAX (512) 463-6989

1701 N. CONGRESS

CAPITOL STATION - P O BOX 12967

AUSTIN, TEXAS 78711-2967

Oil and Gas Docket No. 02-0204130

COMMISSION CALLED HEARING ON THE COMPLAINT OF GO-ENERGY COMPANY AGAINST UNION CARBIDE CORPORATION AND SEADRIFT PIPELINE CORPORATION ALLEGING DISCRIMINATORY PRACTICES IN THE PURCHASE AND TRANSPORTATION OF GAS, RICHIE(4150) AND RICHIE (4400) FIELDS, GOLIAD COUNTY, TEXAS

APPEARANCES:

REPRESENTING:

COMPLAINANT

Joe Peacock
 Elton Smith

Go-Energy Company
 Go-Energy Company

RESPONDENT

Clayton Smith
 Jerry L. Lockett
 Terry Calvert

Union Carbide Corporation
 Seadrift Pipeline Corporation
 Union Carbide Corporation
 Seadrift Pipeline Corporation
 Union Carbide Corporation

PROCEDURAL HISTORY

Complaint Filed:	October 29, 1993
Notice of Hearing:	December 30, 1993
Hearing Held:	January 27, 1994
PFD Circulated	March 8, 1994
Heard by:	Larry Borella, Hearings Examiner Donna Chandler, P. E., Technical Examiner

STATEMENT OF THE CASE

This complaint hearing was called to determine whether Union Carbide Corporation and its wholly owned subsidiary, Seadrift Pipeline Corporation (herein referred to as "Union Carbide", "Seadrift", or collectively as "respondents") has, and is, discriminating against Go-Energy Company ("Go-Energy" or "complainant") in violation of the Common Purchaser Act, Tex. Nat. Res. Code § 111.081 et. seq., by failing to purchase or transport natural gas from the complaint's F. G. Gabriel Lease, Wells No. 1A and 3, in the Richie (4150) and Richie (4400) Fields respectively, and to determine whether respondents, individually or collectively, disconnected the aforementioned wells in violation of Statewide Rule 73. Respondents deny both allegations. Each party's evidence is summarized below.

COMPLAINANT'S EVIDENCE

Prior to March of 1993, Go-Energy became the operator of Wells No. 1A and 3 ("subject wells") in the Richie (4150) and Richie (4400) Fields in Goliad County. These wells have been inactive since 1987. Prior to 1987, the gas produced (approximately .3BCF cumulative production with additional recoverable reserves of 1 to 2 BCFG remaining) from these wells was purchased by Union Carbide. The gas was gathered from the wells through a one mile line (owned by the well's operator) to an 8.3 mile pipeline know as the Sarco Lateral (see Exhibit 1, attached). The sales meter was located at the gathering line-Sarco Lateral connection. The Sarco Lateral then connected to the Seadrift Burnell Line and delivered the gas to end users.

Go-Energy had, prior to acquiring the wells, entered into discussion with Union Carbide concerning the purchase of any gas to be produced from these wells. These discussions addressed the necessity of Go-Energy to cure certain title defects (i.e., areas Union Carbide thought to be defects), pipeline gas specifications, and price. The title defects were subsequently cleared. Go-Energy was under the impression that no serious obstacles to Union Carbide's purchasing the gas existed. Subsequently, Union Carbide has refused to connect to the wells and take the gas they are capable of producing.

No viable alternative exists to market Go-Energy's gas. A Delhi line exists to the north but Go-Energy is convinced that no right-of-way can be purchased to connect to it and the cost to construct the necessary 24,000 foot line would be prohibitive, even if a right-of-way could be obtained. Go-Energy intends to construct a new one mile gathering line to deliver the subject well's gas to the Sarco Lateral.

In addition to having transported and purchased gas from previous operators of the subject wells, Seadrift currently gathers, and Union Carbide purchases, gas from the Live Oak Lake (4780) Field in Goliad County. Additionally, Seadrift gathered, and Union Carbide purchased, gas from the O'Brien Ranch (4500) Field which lies immediately south of the subject wells. This O'Brien Field gas was transported through the Sarco Lateral.

RESPONDENTS' EVIDENCE

The Sarco Lateral has been inactive since 1987. During the time gas from the subject wells was transported through the Sarco Lateral it was under lease and control (except for physical maintenance) of Gabriel Prospect Pipeline, Inc. The gas purchased from the subject wells was delivered by Gabriel Prospect Pipeline to Union Carbide at the Sarco Lateral-Seadrift Burnell connection. Neither Union Carbide nor Seadrift was ever connected to the subject wells. No gas is transported through the Seadrift Burnell Line for anyone other than Union Carbide. The Sarco Lateral is currently inactive. Recommission of the Sarco Lateral would require expenditures of approximately \$175,000.

Union Carbide has altered its gas purchasing procedures since gas became plentiful. Union Carbide prefers to purchase gas from marketers, rather than producers. The gas that Union Carbide currently buys from producers are obligations entered into prior to the availability of plentiful gas from marketers. No contract exists between Union Carbide and Go-Energy.

EXAMINERS' ANALYSIS

On questioning from the examiner, Go-Energy's witness stated that the wells flow at approximately 1200 psi. Union Carbide/Seadrift's witnesses stated that:

Union Carbide preferred to do business with "people our own size",

the Sarco Lateral Line is no longer under lease,

the Sarco Lateral Line has not been abandoned, is currently filled with methane at approximately 50 psi, has been maintained by cathodic protection,

no physical impediments to the line's use are known,

being required to purchase the subject well's gas would not result in Union Carbide's breaching any contract (i.e., any gas purchased from the subject wells would result in a reduction in gas bought on the spot market),

the Seadrift Burnell Pipeline is an intrastate pipeline, no connection exists between the Sarco Lateral and the Trunk Line south of the subject wells.

the Seadrift Burnell line operates at approximately 650 psi.

Chapter 111, §§ 111.001-111.305, of the Texas Natural Resources Code govern the operations of common carriers and common purchasers in Texas. Section 111.081(a)(2) identifies, as a common purchaser:

every person, gas pipeline company, or gas purchaser that claims or exercises the right to carry or transport natural gas by pipeline or pipelines for hire, compensation, or otherwise within the limits of this state or that engages in the business of purchasing or taking natural gas, residue gas, or casinghead gas thereof;

Union Carbide purchases and takes gas and Seadrift transports that gas. Union Carbide and Seadrift are common purchasers under this definition. Section 111.083 applies the same duty on common purchasers of gas as is applied to common purchasers of oil. One such duty found in § 111.086(a), is the duty to purchase oil (or gas) "without unjust or unreasonable discrimination between fields in this state". Sections 111.090 and 111.137 give the Commission broad authority to enforce the Common Purchaser Act, including the authority to order a common purchaser to enlarge its facilities if appropriate. (see also Railroad Commission v. Rio Grande Valley Gas Co. 405 SW2d 304 (1966)). Section 111.086(b) states: "...the question of justice or reasonableness to be determined by the Railroad Commission, taking into consideration the production and age of wells in respective fields and all other proper factors". Whether discrimination is unjust or unreasonable is a question of fact for the Commission.

The salient facts concerning the reasonableness, or unreasonableness, of Union Carbide's decision not to take the gas are: Union Carbide and Seadrift are common purchasers; Union Carbide purchased, and Seadrift transported, gas from these wells in the past; no physical or legal impediment exist to the future purchase of additional gas from these wells; the volume of gas offered is substantial; Union Carbide has a need for the gas offered; the Sarco Lateral and Seadrift Burnell lines are capable of transporting the gas; Union Carbide will not be unreasonably prejudiced by taking the gas; no less onerous alternative to marketing the subject well's gas exists; Union Carbide prefers to deal with large entities. In view of the foregoing, Union Carbide's and Seadrift's refusal to purchase and transport gas from the subject wells is unjust and unreasonable and is a violation of the Common Purchaser Act.

The evidence indicates that neither Union Carbide nor Seadrift were, at any time, connected directly to the subject wells. It is unclear how the gathering line from the wells became disconnected from the Sarco Lateral, but the disconnection apparently occurred while the Sarco Lateral was under the control of Seadrift's lessee, Gabriel Prospect Pipeline, Inc. No violation of SWR 73 has been proven.

EXAMINERS' RECOMMENDATION

The examiners recommend that the Commission enter the attached order requiring Union Carbide Corporation to purchase the gas from Go-Energy Company's F. G. Gabriel Lease, Wells No. 1A and 3 in the Richie (4150) and Richie (4400) Fields and dismissing the complaint alleging a violation of SWR 73.

FINDINGS OF FACT

1. Union Carbide Corporation ("Union Carbide") and Seadrift Pipeline Corporation ("Seadrift") were given at least 10 days notice of this hearing.
2. Go-Energy Company ("Go_Energy") is the operator of the F. G. Gabriel Lease, Wells No. 1A and 3 (subject wells) in the Richie (4150) and Richie (4400) Fields, Goliad County Texas.
3. The subject wells, individually or collectively, are capable of producing substantial quantities of gas. The most recent G-1 for the Gabriel 1A well indicated an absolute open flow of 8,200 mcf/d.
4. Go-Energy has offered to sell gas from the subject wells to Union Carbide.
5. Go-Energy Company's only reasonable market outlet for gas produced from the subject wells is through the Sarco Lateral pipeline owned by Seadrift Pipeline Corporation (Seadrift).
6. Seadrift's Sarco Lateral line connects to its Burnell Line which supplies gas to Union Carbide's Seadrift plant.
7. Seadrift is a wholly owned subsidiary of Union Carbide.
8. Union Carbide has refused to purchase the gas from the subject wells.
9. Seadrift transports natural gas by pipeline within the limits of this state and Union Carbide purchases and takes natural gas from this area of the state.

10. No physical or legal impediment exists to prevent Union Carbide from purchasing and Seadrift from transporting gas from the subject wells.
11. Union Carbide refuses to purchase the gas because it prefers to do business large entities.
12. Union Carbide has a need for the gas offered by Go-Energy.
13. The Sarco Lateral and Seadrift Burnell lines are capable of transporting the gas.
14. Purchasing Go-Energy's gas will not cause Union Carbide or Seadrift to breach any existing contract.
15. Neither Seadrift nor Union Carbide disconnected from the subject wells.

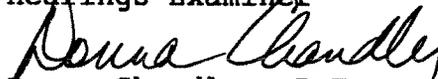
CONCLUSIONS OF LAW

1. Proper notice of hearing was timely given to all persons legally entitled to notice.
2. All things have occurred and have been done to give the Commission jurisdiction to decide this matter.
3. Union Carbide and Seadrift are common purchasers under the Common Purchaser Act, Tex. Nat. Res. Code § 111.081 et. seq. and are required to comply with the duties specified in the Act.
4. Union Carbide's and Seadrift's refusal to purchase and transport gas from the subject wells is unjust and unreasonable and constitutes discrimination against Go-Energy in violation of the Common Purchaser Act.
5. Go-Energy failed to meet its burden of proof that Seadrift violated Statewide Rule 73.

Respectfully submitted,



Larry Borella
Hearings Examiner



Donna Chandler, P.E.
Technical Examiner