

RAILROAD COMMISSION OF TEXAS

**COMPLAINT OF TG BARNETT
RESOURCES LP AGAINST COWTOWN
PIPELINE PARTNERS L.P. AND
COWTOWN GAS PROCESSING PTRS
L.P. FOR DISCRIMINATION IN THE
TAKING, TRANSPORTATION, AND
PROCESSING OF GAS, AND REQUEST
FOR THE COMMISSION TO SET JUST
AND REASONABLE RATES**

§
§
§
§
§
§
§
§
§
§

**GAS UTILITIES DOCKET
NO. 10555**

FINAL ORDER

Notice of Open Meeting to consider this Order was duly posted with the Secretary of State within the time period provided by law pursuant to Tex. Gov't Code Ann. Chapter 551, *et seq.* (Vernon 2008 & Supp. 2015). The Railroad Commission of Texas ("Commission") adopts the following findings of fact and conclusions of law and orders as follows:

FINDINGS OF FACT

General

1. TG Barnett Resources LP ("TG Barnett") filed a discrimination complaint with the Commission against Cowtown Pipeline Partners L.P. and Cowtown Gas Processing Partners L.P. (collectively, "Cowtown") alleging discrimination in the taking, transporting, and processing of gas and requested the Commission to set just and reasonable rates.
2. TG Barnett owns gas that is produced, gathered, processed, transported, and shipped in and through three gas gathering systems located in the Barnett Shale, Newark East Field ("Barnett Shale") producing basin in North Texas.
3. The three gas gathering systems, which are owned by Respondents Cowtown and are the subject of this complaint, are the Alliance, Lake Arlington, and Cowtown Gas Gathering Systems.
4. TG Barnett alleges Cowtown and its affiliates collect rates, fees, and charges that are discriminatory with respect to similarly situated shippers, specifically between TG Barnett and BlueStone Natural Resources, LLC ("BlueStone"), and that those rates are not just and reasonable and are in excess of market-based rates.

The Parties

5. Complainant TG Barnett, a subsidiary of Tokyo Gas Company, Ltd, is a non-operating working interest owner of wells in the Barnett Shale Field in Denton, Hill, Hood, Johnson, Parker, Somervell, and Tarrant Counties. As a non-operator, TG Barnett does not have a Commission P-5 permit.
6. Crestwood Midstream Partners LP ("Crestwood") is the parent company of Respondents Cowtown Pipeline Partners L.P. ("Cowtown Pipeline"), a gas utility, and Cowtown Gas Processing Partners L.P. ("Cowtown Gas Processing"), a gas processor and pipeline operator.
7. Cowtown Pipeline operates as a gas utility under Commission P-5 Permit No. 183246.
8. The T-4 permits for Cowtown Pipeline's gas gathering systems that are the subject of this complaint include: T-06880 and T-07643 for the Cowtown gathering system located in Somervell, Hood, Johnson, and Erath Counties; T-07854 for the Lake Arlington gathering system located in Tarrant County; and T-08015 for the Alliance gathering system located in Denton and Tarrant Counties.
9. Cowtown Gas Processing operates under Commission P-5 Permit No. 183067, which has the following specialty codes: gas processing plant, distribution system/master meter operators, and pipeline operators.

Procedural Background

10. On September 29, 2016, TG Barnett filed a formal complaint against Cowtown for discrimination in the taking and transporting and processing of gas, and violations of Texas Natural Resources Code, Chapters 81, 85, & 111; Statewide Rule 34; Texas Utilities Code Chapter 104; and 16 Texas Administrative Code §7.7001, et. seq.; and requested the Commission to set just and reasonable rates.
11. The Commission has jurisdiction over Cowtown, associated affiliates, and all matters in this proceeding pursuant to Chapters 81 (Railroad Commission of Texas) and 111 (Common Carriers, Public Utilities, and Common Purchasers) ("Common Carrier Act") of the Texas Natural Resources Code and Chapter 121 (Gas Pipeline) of the Texas Utility Code.
12. On October 28, 2016, Cowtown filed its response and a motion to dismiss TG Barnett's complaint, which was denied, and a motion to abate discovery. The parties were ordered to reengage in the discovery process.
13. On March 10, 2017, the Examiners determined the docket would proceed in two phases: the first phase considered TG Barnett's discrimination claim and the

second phase would proceed as a formal rate proceeding *if* discrimination was found.

14. On July 27, 2017, the Notice of Hearing was issued and subsequently published in *Gas Utilities Information Bulletin No. 1064* on July 31, 2017, in accordance with 16 Tex. Admin. Code § 7.235 (Publication and Service of Notice).
15. The merits hearing ("Hearing") for the first phase was conducted on August 22 and 23, 2017; and September 18, 19, and 21, 2017.
16. The evidentiary record closed on July 3, 2019.
17. On July 17, 2019, the Proposal for Decision ("PFD") was issued.

Relevant Background

18. Quicksilver operated wells and built, through its subsidiaries, the Alliance, Lake Arlington, and Cowtown Gas Gathering Systems in the Barnett Shale producing basin in North Texas.
19. In 2009, ENI US Operating Company, Inc., and ENI Petroleum US LLC (collectively, "ENI") acquired a 27.5 percent working interest from Quicksilver in its Alliance System.
20. In 2010, Crestwood entered an agreement with Quicksilver, the producer, to acquire Cowtown Pipeline, a gatherer, and Cowtown Gas Processing, a processor. The parties agreed Crestwood, as the parent company, would continue to perform the gathering and processing duties of the systems through both entities.
21. Tokyo Gas Company, Ltd. ("Tokyo Gas"), a gas utility in Japan, formed TG Barnett to acquire a 25 percent undivided interest in Quicksilver's Barnett Shale Asset (i.e., the Cowtown, Lake Arlington, and Alliance Gas Gathering Systems). Tokyo Gas hired several prominent companies to conduct due diligence into its purchase of the Barnett Shale Asset: technical, legal, financial, land title, and environmental due diligence as well as due diligence related to the credibility of Quicksilver.
22. On April 30, 2013, with an effective date of September 1, 2012, TG Barnett purchased 25 percent of the undivided interest from Quicksilver, the operator of the wells, in its Barnett Shale assets acquiring a 25 percent working interest in the Cowtown System and in the Lake Arlington System and a 18.125 percent working interest in the Alliance System. The 18.125 percent working interest in the Alliance System was 25 percent of Quicksilver's remaining interest after the 27.5 percent ENI previously acquired.

23. The table below shows a summary of the ownership interest of the working interest owners by gathering systems.

Owner	Cowtown System	Alliance System	Lake Arlington System
Quicksilver	75%	54.375%	75%
TG Barnett	25%	18.125%	25%
ENI	N/A	27.5%	N/A

24. TG Barnett agreed, as part of the April 2013 transaction, that its gas would be gathered and compressed and processed in accordance with Quicksilver's existing agreements with Cowtown.
25. On July 9, 2014, TG Barnett, without having any negotiations with the Crestwood or Cowtown entities, became a signatory and producer to the preexisting gathering and processing contracts between Quicksilver and Cowtown. The contract terms to all three systems expires in December 2020.
26. On July 9, 2014, ENI did not sign on as a producer in the contracts for the three gas gathering systems between Quicksilver and Cowtown.
27. Quicksilver began shutting in wells in November 2014, which led to a reduction in production in the Barnett Shale.

The Bankruptcy Proceeding

28. On March 17, 2015, Quicksilver filed for bankruptcy.
29. On October 6, 2015, Quicksilver received approval to auction its assets, including its Barnett Shale Asset, under the Bankruptcy Code.
30. The auction commenced on January 20, 2016 and concluded on January 21, 2016.
31. BlueStone submitted the winning bid for Quicksilver's assets but conditioned the closing of the sale transaction with the rejection of the existing gathering and processing Quicksilver contracts with Cowtown (i.e., the Alliance, Lake Arlington, and Cowtown gas gathering agreements).
32. BlueStone's P-5 permit number is 076861.
33. On January 27, 2016, the bankruptcy court approved the sale of Quicksilver's assets to BlueStone with March 31, 2016, scheduled as the closing date.
34. On February 5, 2016, Quicksilver petitioned the bankruptcy court to reject the Alliance, Cowtown, and Lake Arlington Gas Gathering Agreements between Cowtown and Quicksilver in order to close the sale of its assets to BlueStone.

35. Crestwood, on behalf of the Cowtown entities, negotiated new contracts with BlueStone.
36. On April 6, 2016, Quicksilver withdrew its motion to reject the gathering contracts between Quicksilver and Cowtown before the Bankruptcy court could rule on Quicksilver's motion.
37. On April 6, 2016, BlueStone and Cowtown negotiated new rates for each of the three gathering systems, which became effective on April 1, 2016.
38. BlueStone did not acquire the interests of TG Barnett or ENI.
39. TG Barnett and ENI were not parties to Quicksilver's bankruptcy proceeding.
40. TG Barnett does not have the same reduced rates in each of the three gathering systems with Cowtown as BlueStone had negotiated.

Similarly Situated Shippers: Conditions and Circumstances Existing at the Time of Agreement or Negotiation

41. Although all thirteen factors set forth in the definition of "similarly situated shipper" were considered, including arguments delving into the specifics of the contracts to compare BlueStone and TG Barnett, they are not dispositive to the analysis of similarly situated shippers but instead diverted attention from the actual dispositive factor: the conditions and circumstances existing at the time of agreement or negotiation.
42. Natural gas prices of approximately \$5.36 per MMBtu and propane prices of \$1.02 per gallon were generally in this range from 2008 through 2014. With strong commodity prices, the demand for processing services were strong.
43. Before TG Barnett signed its 2014 Cowtown amendments, natural gas, crude oil, and propane commodity prices were high.
44. When BlueStone signed its contracts in April 2016, the commodity prices were low.

45. The table below tracks the commodity prices during the development of the Barnett Shale (2008 and 2009), when Crestwood bought the gathering systems (October 2010), the effective date of TG Barnett's April 2013 agreements (September 2012), when TG Barnett bought its 25 percent interests from Quicksilver (April 2013), when TG Barnett became a producer party to the three gas gathering systems (June 2014), and when BlueStone executed its agreements with Cowtown's three gas gathering systems (April 2016).

Month	Crude Oil WTI, Cushing (\$/Bbl)	Natural Gas Henry Hub (\$/MMBtu)	Propane MB, non-TET cents/gallon
September 2008	103.65	7.81	152.92
December 2009	74.47	5.19	119.17
October 2010	81.90	3.48	123.16
September 2012	94.51	2.84	90.85
April 2013	92.02	4.15	94.00
June 2014	105.24	4.57	104.49
April 2016	40.95	1.89	45.46

46. In 2008, drilling activity was robust. By 2010, drilling activity decreased but there was an expectation that the drilling activity would pick up.
47. By March 2016, there was little to no drilling activity and Quicksilver had shut in its wells due to the economic downturn in energy prices since late 2014 and due to Quicksilver's financial situation.
48. TG Barnett became a producer party to the three gas gathering systems before Quicksilver shut-in its wells and filed for bankruptcy and before a number of producers in the area had already shut in other wells.
49. In its agreement with Cowtown for lower rates, BlueStone agreed to restore production of shut-in wells and to not shut-in wells for economic reasons.
50. TG Barnett had no bargaining leverage over Cowtown at the time of the Quicksilver bankruptcy, at the time of the negotiations between BlueStone and Cowtown, or at the time it became a producer party with Quicksilver.
51. BlueStone entered into contracts with Cowtown after Quicksilver filed for bankruptcy and after Quicksilver's contracts with Cowtown were threatened to be rejected by the bankruptcy court.
52. BlueStone had significant leverage in the negotiations with Cowtown while TG Barnett did not, because it was amending existing, binding agreements.
53. TG Barnett did not establish it is a similarly situated shipper to BlueStone.

54. TG Barnett failed to establish that the conditions and circumstances existing at the time of agreement or negotiation between TG Barnett and Cowtown and between BlueStone and Cowtown were the same.

CONCLUSIONS OF LAW

1. Cowtown Pipeline is a "gas utility" as the term is defined under Tex. Util. Code § 121.001 and is therefore subject to the jurisdiction of the Commission.
2. The Commission has exclusive original jurisdiction over all matters decided in this docket.
3. All required notices were issued and/or provided in accordance with the requirements of Subtitle A (Administrative Procedure and Practice) of the Texas Government Code and applicable Commission rules.
4. This proceeding was conducted in accordance with Subtitle A (Administrative Procedure and Practice) of the Texas Government Code and applicable Commission rules.
5. The PFD was served on all parties in accordance with 16 Tex. Admin. Code §1.121 (Proposals for Decision).
6. In a complaint filed with the Commission, the burden of proof rests upon the complainant, TG Barnett, by a preponderance of the evidence. 16 Tex. Admin. Code §1.23(b)(Complaint Proceedings).
7. The factor that is material and probative in the analysis as to whether TG Barnett and BlueStone are similarly situated shippers is Subsection (M), conditions and circumstances existing at the time of agreement or negotiation. 16 Tex. Admin. Code §7.115(32)(M)(Definition of "similarly situated shipper").
8. TG Barnett failed to meet its burden under 16 Tex. Admin. Codes §§7.7001 and 7.7003.
9. BlueStone and TG Barnett are not similarly situated shippers; therefore, unreasonable discrimination has not occurred. See 16 Tex. Admin Code §§ 7.7003(Administrative Penalties and Other Remedies for Discrimination), 7.7001(Natural Gas Transportation Standards and Code of Conduct)

IT IS THEREFORE ORDERED that TG Barnett's complaint is **DENIED** and **DISMISSED**. Unreasonable discrimination has not occurred, and a rate case is unnecessary.

IT IS FURTHER ORDERED that all other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not granted or approved in this Order, are hereby **DENIED**.

IT IS FURTHER ORDERED this Order will not be final and effective until 25 days after the Commission's Order is signed. If a timely motion for rehearing is filed by any party at interest, this Order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. The time allotted for Commission action on a motion for rehearing in this docket prior to its being overruled by operation of law is hereby extended until 100 days from the date this Order is signed.

SIGNED on September 11, 2019.

RAILROAD COMMISSION OF TEXAS



CHAIRMAN WAYNE CHRISTIAN



COMMISSIONER CHRISTI CRADDICK

COMMISSIONER RYAN SITTON

ATTEST:

Deputy



SECRETARY

