

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SOUTHCROSS ENERGY PARTNERS, L.P., *et al.*

Debtors.¹

FL RICH GAS SERVICES, LP

Plaintiff,

– against –

FRIO LASALLE PIPELINE, L.P.

Defendant.

Chapter 11

Case No. 19–10702 (MFW)

Jointly Administered

Adv. Pro. No. 19-50286 (MFW)

ADVERSARY PROCEEDING COMPLAINT

Plaintiff FL Rich Gas Services, LP, by and through its undersigned attorneys, alleges upon personal knowledge as to its own acts and upon information and belief as to all other matters, as follows:

¹ The debtors and debtors in possession in these cases and the last four digits of their respective Employer Identification Numbers are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings, LLC (0613); and T2 EF Cogeneration LLC (4976). The mailing address for the Debtors' corporate headquarters is 1717 Main Street, Suite 5200, Dallas, TX 75201.



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SUMMARY OF ALLEGATIONS

1. In 2014, FL Rich Gas Services, LP (“**FL Services**”) and Frio LaSalle Pipeline, L.P. (“**Holdings-Frio**”) entered into a contract (“**Lancaster Rich Gas Agreement**” or “**Agreement**”).²

2. Under the Agreement, [REDACTED]

[REDACTED]

[REDACTED]

3. Now, Holdings-Frio has threatened to breach the Agreement. [REDACTED]

[REDACTED]

[REDACTED] Holdings-Frio—in both direct communications to FL Services, and in communications to potential purchasers of Holdings-Frio’s assets—claims that it can evade the Agreement’s clear terms.

4. FL Services brings this action in order to obtain a declaratory judgment to prevent Holdings-Frio from breaching both the express terms of the Agreement and the implied duty of good faith and fair dealing imposed under Texas law.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This action is a core proceeding under 28 U.S.C. § 157(b).

6. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

² A true and correct copy of the Lancaster Rich Gas Agreement is attached as Exhibit 1 to the Declaration of Elliot Moskowitz, filed concurrently with this Adversary Proceeding Complaint. *See* Moskowitz Decl. Ex. 1.

PARTIES

7. Plaintiff FL Services is a Texas limited partnership headquartered in Dallas, Texas. FL Services is a wholly owned subsidiary of Southcross Energy Partners, L.P. (“**MLP**”). Both FL Services and MLP filed voluntary Chapter 11 petitions in this Court on April 1, 2019.

8. On information and belief, Defendant Holdings-Frio is a Texas limited partnership headquartered in Dallas, Texas. Holdings-Frio is a wholly owned subsidiary of Southcross Holdings, LP (“**Holdings**”).

BACKGROUND

A. Corporate History

9. Southcross’s corporate history traces back to 2009, when private equity sponsors created Southcross Energy LLC to own and operate natural gas assets in South Texas, Mississippi, and Alabama. In April 2012, Southcross Energy LLC formed MLP, a master limited partnership that completed its initial public offering on November 7, 2012. After the initial public offering, Southcross Energy LLC continued as the owner of the general partner of MLP.

10. The current Southcross structure was created from a series of agreements executed on June 11, 2014 (the “**Contribution Agreements**”).³ Through the Contribution Agreements, Southcross Energy LLC combined with TexStar Midstream Services, LP (“**TexStar**”)—a natural gas partnership operating in South Texas—to create Holdings. Holdings then replaced Southcross Energy LLC as the owner of the general partner of MLP.

³ The Contribution Agreements consist of two separate agreements: a Contribution Agreement By and Among BBTS Borrower LP, Southcross Energy LLC and Southcross Holdings LP dated as of June 11, 2014 (the “**Primary Contribution Agreement**”) and a Contribution Agreement By and Among Southcross Energy Partners, LP, Southcross Energy GP LLC, and TexStar Midstream Services, LP dated as of June 11, 2014 (the “**Drop-Down Contribution Agreement**”).

11. The Contribution Agreements divided TexStar's assets between Holdings and MLP. Holdings received the Lancaster Gathering System, which includes gas pipelines and a treating system in Frio and La Salle Counties, Texas. Through a "drop-down agreement" with Holdings, MLP received the Rich Gas System, which includes the Lone Star Plant, a processing plant at the Pettus Complex in Bee County, Texas.

12. Both FL Services and Holdings-Frio were born out of the Contribution Agreements. The Contribution Agreement called for the division of a former TexStar operating subsidiary into a Holdings operating subsidiary (Holdings-Frio) operating the Lancaster Gathering System and an MLP operating subsidiary (FL Services) operating the Rich Gas System. *See* Primary Contribution Agreement § 8.16; Drop-Down Contribution Agreement § 7.12.

13. Because Holdings needed a processing plant to process its gas from the Lancaster Gathering System, and because MLP needed a supply of gas to process at its Lone Star Plant, the Contribution Agreements called for Holdings-Frio and FL Services to enter into a contract to connect Holdings' Lancaster Gathering System to MLP's Rich Gas System. Specifically, the schedules to the Contribution Agreements referenced:

A to be entered into Gas Transportation and Processing Agreement, between [FL Services] and [Holdings-Frio]. This agreement will provide for pipeline transportation and gathering fees and services, as well as natural gas processing fees and services provided by [FL Services] to [Holdings-Frio], by virtue of its ownership in the Rich Gas System assets.

Schedules to Primary Contribution Agreement § 8.16; Schedules to Drop-Down Contribution Agreement § 7.12.

14. Notably, at the time when Holdings-Frio and FL Services were "negotiating" this agreement, they were two affiliated entities within the Southcross family. At all relevant times, Holdings-Frio and FL Services shared services, including lawyers, accountants, and other

employees. The negotiations were not at arm's-length, and were merely formalizing a well-understood intercompany relationship.

B. Holdings-Frio and FL Services Enter into the Lancaster Rich Gas Agreement

15. Holdings-Frio and FL Services executed the aforementioned Lancaster Rich Gas Agreement, [REDACTED]. Generally speaking, the Agreement governs the terms on which FL Services provides various services to process natural gas from Holdings-Frio's Lancaster Gathering System. [REDACTED]

[REDACTED]

16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17. After entering into the Agreement, Holdings-Frio continued to contract with various producers to obtain gas for Holdings' Lancaster System. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18. Since the Lancaster Rich Gas Agreement was executed, MLP—through its subsidiary FL Services—has derived a material portion of its revenue from the Lancaster Rich Gas Agreement and its other contracts with Holdings and Holdings’ subsidiaries. In 2018 alone, the terms of the Agreement generated FL Services \$10.8 million in gross margin. Declaration of Michael B. Howe in Support of Debtors’ Chapter 11 Proceedings and First Day Pleadings (“Howe Declaration”) ¶ 16, *In re Southcross Energy Partners, L.P.*, No. 19-10702 (Bankr. D. Del. Apr. 1, 2019) (ECF No. 2).

C. Holdings-Frio Threatens to Breach the Lancaster Rich Gas Agreement

19. When MLP and its subsidiaries, including FL Services, filed for bankruptcy under Chapter 11 in this Court on April 1, 2019, the Lancaster Rich Gas Agreement constituted a significant asset in any potential transaction. *See* Howe Declaration ¶ 16. Indeed, uncertainty regarding whether the Lancaster Rich Gas Agreement will provide a continuing revenue stream may impair MLP’s sales process and reorganization. In short, the resolution of this dispute has a direct impact on the administration of the Debtors’ estate.

20. Holdings (which did not file for bankruptcy) is also exploring a sale process, and the fact that it has losing margins on the Agreement constitutes a liability in any potential transaction. To address these concerns and promote value for both parties, MLP and Holdings began to discuss potential options for renegotiating the Lancaster Rich Gas Agreement.

21. In response to MLP's good-faith efforts to renegotiate the Agreement, Holdings threatened to breach the Agreement. On May 14, 2019, Alan Boswell, the President and Chief Executive Officer of Holdings, sent a letter to the MLP Board of Directors (the "**Boswell Letter**"). In this letter, Mr. Boswell wrote: "[Holdings-Frio] believes it can recontract with its producer customers on the Lancaster System so that [Holdings-Frio] no longer has processing rights. [Holdings-Frio] believes this will [REDACTED] [REDACTED]."

22. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] On information and belief, Holdings-Frio is also advising potential buyers that the Lancaster Rich Gas Agreement can be evaded in this way. FL Services has advised Holdings that the renegotiation of these agreements would constitute a breach of the Lancaster Rich Gas Agreement but, on information and belief, Holdings has not taken any steps to [REDACTED] or notify potential buyers that renegotiation would breach the Agreement.

23. In addition to the harm to FL Services that would result from any attempt by Holdings-Frio to carry out these threats, Holdings-Frio is misrepresenting the rights of Holdings-Frio to potential buyers.

* * * * *

FIRST CLAIM FOR RELIEF

Declaratory Judgment that Any Attempt by Holdings-Frio to Renegotiate Its Underlying Producer Contracts Would Constitute a Breach of Contract

24. FL Services repeats and incorporates the allegations in paragraphs 1 through 23 of this Complaint.

25. The Lancaster Rich Gas Agreement between FL Services and Holdings-Frio constitutes a valid contract under Texas law. The formation of the Agreement was effectuated upon an offer and acceptance in strict compliance with the offer's terms; a meeting of the minds between the parties and their consent to the contract's terms; and the execution and delivery of the contract with the intent that it be mutual and binding. *See Thornton v. AT & T Advert., L.P.*, 390 S.W.3d 702, 705 (Tex. App. 2012).

26. FL Services has tendered performance under the Lancaster Rich Gas Agreement.

[REDACTED]

27. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

28. Insofar as Holdings-Frio attempts to renegotiate its underlying contracts with producers such that [REDACTED] this too would constitute a breach of the Lancaster Rich Gas Agreement. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In the context of gas agreements such as these, [REDACTED]

[REDACTED]

[REDACTED] *Nordan-Lawton Oil & Gas Corp. of Tex. v. Miller*, 272 F. Supp. 125, 129 (W.D. La. 1967), *aff'd*, 403 F.2d 946 (5th Cir. 1968).

[REDACTED]

Holdings-Frio cannot evade that obligation by seeking to renegotiate its underlying producer contracts. Any such maneuver would constitute a breach of the Agreement.

29. Finally, FL Services would sustain significant damages as a result of Holdings-Frio's breach. FL Services currently earns [REDACTED] million in annual gross margin from the Agreement. If Holdings-Frio violated the Agreement, FL Services would be deprived of millions of dollars in profits to which it is contractually entitled.

30. In sum, by renegotiating the terms of its underlying producer contracts as contemplated in the Boswell Letter, [REDACTED], and communications with potential buyers, Holdings-

Frio would be violating the terms of a valid contract under which FL Services has already tendered performance, thereby causing FL Services to suffer damages. Accordingly, Holdings-Frio's actions would constitute a breach of contract under Texas law. *See Thornton*, 390 S.W.3d at 705.

31. Moreover, the present feud between FL Services and Holdings-Frio is not a “theoretical dispute,” but rather a “justiciable controversy . . . concerning the rights and status of the parties” that would be resolved by a declaratory judgment. *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995). On at least two occasions, Holdings-Frio has maintained that it—or a prospective buyer of its assets—may effectively nullify a valid contract that is worth millions of dollars to its contractual counterparty, FL Services. What is more, Holdings-Frio continues to make this misrepresentation to prospective purchasers who may purchase the assets on this basis and take these steps. Thus, there is a “real and substantial controversy involving a genuine conflict of tangible interests.” *Id.* A declaratory judgment, however, would resolve this dispute. Accordingly, this Court should issue a judgment declaring that any efforts by Holdings-Frio to renegotiate its underlying producer contracts and evade its obligations under the Agreement constitute a breach of contract.

SECOND CLAIM FOR RELIEF

Declaratory Judgment that Any Attempt by Holdings-Frio to Renegotiate Its Underlying Producer Contracts Would Violate the Implied Duty of Good Faith and Fair Dealing

32. FL Services repeats and incorporates the allegations in paragraphs 1 through 31 of this Complaint.

33. As affiliated, intercompany entities, Holdings-Frio and FL Services are in a “special relationship” arising from “the element of trust necessary to accomplish the goals of the[ir] undertaking.” *English v. Fischer*, 660 S.W.2d 521, 524 (Tex. 1983) (Spears, J.,

concurring). That the Lancaster Rich Gas Agreement was not executed as an ordinary, arm's-length commercial transaction further underscores the existence of a special relationship. *See Humble Emergency Physicians, P.A. v. Mem'l Hermann Healthcare Sys., Inc.*, No. 01–09–00587–CV, 2011 WL 1584854, at *7 (Tex. App. Apr. 21, 2011). This special relationship gives rise to an implied duty of good faith and fair dealing between FL Services and Holdings-Frio. *See Caton v. Leach Corp.*, 896 F.2d 939, 948 (5th Cir. 1990).

34. By renegotiating its underlying contracts with producers so as to evade its contractual obligations under the Lancaster Rich Gas Agreement, Holdings-Frio would fail to “deal fairly” with FL Services, thereby breaching the implied duty of good faith and fair dealing. *Humble Emergency Physicians*, 2011 WL 1584854, at *7. Although Holdings-Frio’s breach of contract is evidence of its bad faith, its breach of the duty of good faith and fair dealing gives rise to a separate cause of action sounding in tort. *See Viles v. Sec. Nat’l Ins. Co.*, 788 S.W.2d 566, 567 (Tex. 1990).

35. The dispute between Holdings-Frio and FL Services is a “justiciable controversy . . . concerning the rights and status of the parties” that would be resolved by a declaratory judgment. *Bonham*, 907 S.W.2d at 467. Accordingly, this Court should declare any attempts by Holdings-Frio to renegotiate its underlying producer contracts and evade its obligations under the Agreement a breach of the implied duty of good faith and fair dealing.

REQUEST FOR RELIEF

WHEREFORE, for the foregoing reasons, FL Services respectfully requests that this Court enter an order:

- (a) declaring that any efforts by Holdings-Frio to renegotiate its underlying producer contracts and evade its obligations under the Lancaster Rich Gas Agreement constitute a breach of contract and a breach of the implied duty of good faith and fair dealing; and

(b) awarding such other relief as the Court deems proper.

Dated: New York, New York
August 12, 2019

By: /s/ Robert J. Dehney

MORRIS, NICHOLS ARSHT & TUNNELL LLP
Robert J. Dehney (No. 3578)
Andrew R. Remming (No. 5120)
Joseph C. Barsalona II (No. 6102)
Eric W. Moats (No. 6441)
1201 North Market Street, 16th Floor
P.O. Box 1347
Wilmington, Delaware 19899-1347
Tel.: (302) 658-9200
Fax: (302) 658-3989
rdehney@mnat.com
aremming@mnat.com
jbarsalona@mnat.com
emoats@mnat.com

-and-

DAVIS POLK & WARDWELL LLP
Elliot Moskowitz (*admitted pro hac vice*)
Adam G. Mehes (*admitted pro hac vice*)
Katherine Cheng (*admitted pro hac vice*)
450 Lexington Avenue
New York, New York 10017
(212) 450-4000 (telephone)
(212) 701-5800 (facsimile)
elliot.moskowitz@davispolk.com
adam.mehes@davispolk.com
katherine.cheng@davispolk.com

Counsel for Plaintiff FL Rich Gas Services, LP