EX-10

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exhibit1022.htm

GUARANTY BETWEEN SWN AND FEP

EXHIBIT 10.22

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GUARANTY

THIS GUARANTY (this Guaranty), is made and entered into as of

September 30, 2008, by SOUTHWESTERN ENERGY COMPANY, a Delaware corporation

(Guarantor), in favor of FAYETTEVILLE EXPRESS PIPELINE LLC, a Delaware limited

liability company (Fayetteville).  (Except as otherwise defined herein,

capitalized terms used herein and defined in the PA (as defined below) shall be

used herein as therein defined.)

W I T N E S S E T H :

WHEREAS, Southwestern Energy Services Company, an Arkansas

corporation (including its permitted affiliated assigns under Section 12 of the

PA (as hereinafter defined), Foundation Shipper) is an indirect wholly-owned

subsidiary of Guarantor; and Guarantor wishes Foundation Shipper to enter into

the Precedent Agreement, dated as of September 30, 2008 (as it may from time to

time be modified, supplemented, or amended, the PA)and the FTS Agreement

described in Section 2 of the PA, to be entered into by Foundation Shipper and

Fayetteville (as it may from time to time be modified or extended, the FTS

Agreement);

WHEREAS, pursuant to the PA, Foundation Shipper has certain

obligations to Fayetteville upon the terms and conditions set forth in the PA

and will incur certain additional obligations to Fayetteville under the FTS

Agreement (all such obligations, including the obligations of Foundation Shipper

to pay amounts due under the FTS Agreement, being referred to collectively as

the Guaranteed Obligations);

WHEREAS, Fayetteville is willing to enter into the PA with

Foundation Shipper on the condition that it receive certain assurances regarding

the payment of the Guaranteed Obligations, and Guarantor is willing to provide

such assurances in accordance with the terms and conditions of this Guaranty;

and

WHEREAS, Guarantor acknowledges that, as the parent of Foundation

Shipper, it will be considerably benefited by the execution and delivery of the

PA.

NOW, THEREFORE, in consideration of the premises and the mutual

covenants contained herein and other good and valuable consideration, the

adequacy and receipt of which are hereby acknowledged, Guarantor hereby agrees

as follows:

1.

Guarantor absolutely, irrevocably and unconditionally guarantees

to Fayetteville payment when due by Foundation Shipper of the Guaranteed

Obligations as follows:

(a)

(i) from the date hereof and until Fayettevilles filing of the

Certificate Application with FERC, and (ii) during any period in which

Foundation Shipper meets the creditworthiness requirements set forth in Section

5.3(a) of the PA, the amount of the Guaranteed Obligations guaranteed by

Guarantor hereunder shall be zero (0) (the Tier I Cap);

(b)

upon Fayettevilles filing of the Certificate Application with

FERC and until Fayetteville shall have accepted a certificate of public

convenience and necessity issued by FERC pursuant to section 7(c) of the Natural

Gas Act which authorizes the construction of the Pipeline (the FERC

Authorization), Guarantor guarantees full and prompt payment of the Guaranteed

Obligations up to an amount not to exceed the product of (x) nine (9) months,

(y) Foundation Shippers contract maximum daily quantity under the FTS Agreement

and any firm transportation agreement entered into pursuant to Section 2.5 of

the PA (collectively, and as in effect from time to time after taking into

account the increases or decreases contemplated herein, the MDQ), and (z) as

applicable to each portion of the MDQ, the monthly rates stated in Section

2.1(c) of the PA or any Favored Nations Rate in effect pursuant to Section 2.6

(such product being, the Tier II Cap); and

(c)

upon Fayettevilles acceptance of the FERC Authorization, and

subject to an earlier termination of the PA, Guarantor guarantees full and

prompt payment of the Guaranteed Obligations up to an amount not to exceed the

lesser of (x) (i) in the case of the Primary Term, the product of (A) thirty

(30) months, (B) the MDQ and (C) as applicable to each portion of the MDQ, the

monthly rates stated in Section 2.1(c) of the PA or any Favored Nations Rate in

effect pursuant to Section 2.6 or, (ii) in the case of any extended term, the

product of (A) thirty (30) months, (B) the MDQ and (C) as applicable to each

portion of the MDQ, the monthly rates stated in Section 2.1(c) of the PA or any

Favored Nations Rate in effect pursuant to Section 2.6 or the rate established

pursuant to Section 2.7 and (y) the total reservation charges for the MDQ for

the remainder of the Primary Term or any extended term, as the case may be (such

product being the Tier III Cap).  The Tier I Cap, the Tier II Cap and the

Tier III Cap are each referred to herein as a Guaranty Cap.

With respect to the increases in amount of the Guaranteed

Obligations guaranteed by Guarantor hereunder triggered by the filing of the

Certificate Application and the acceptance of the FERC Authorization, such

increases shall become effective five (5) days after receipt by Foundation

Shipper of notice from Fayetteville that Fayetteville has filed its Certificate

Application with FERC or that Fayetteville has received and accepted FERC

Authorization, whichever is applicable.  Thereafter, in the case of an

increase of the MDQ under Section 2.5 of the PA or a reduction of the MDQ as a

result of a Rollover Right under Section 2.7 of the PA, adjustments in the

amount of the Guaranteed Obligations guaranteed by Guarantor hereunder shall

become effective upon the execution and delivery of the documentation required

under the PA, or in the case of a permanent release or assignment of capacity,

the PA and the Tariff, as applicable. As of the date hereof, the MDQ under this

Guaranty is 1,200,000 Dth/d.  With respect to any permanent release or

assignment by Foundation Shipper of all or a portion of the MDQ either prior to

or after the Effective Date pursuant to the PA or the Tariff, as applicable (

Permanently Released Capacity) other than to a permitted affiliate assign of

Foundation Shipper, the MDQ set forth in clauses (b)(y),  (c)(x)(i)(B) and

(c)(x)(ii)(B) above shall be reduced by the amount permanently released or

assigned and the amount of the Guaranteed Obligations hereunder shall be

proportionately permanently reduced and this Guaranty shall

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terminate and be of no more force and effect with respect to

Permanently Released Capacity.

2.

This Guaranty shall constitute a guaranty of payment, and not of

collection.  The liability of Guarantor hereunder is exclusive and

independent of any security for or other guaranty of the payment by Foundation

Shipper of the Guaranteed Obligations, whether executed by Guarantor, any other

guarantor or any other party.  This Guaranty shall terminate and be of no

more force and effect upon the earlier to occur of (i) the date upon which

either Foundation Shipper or Fayetteville exercises its respective termination

rights under the PA; or (ii) the date upon which Foundation Shipper no longer

has any of the MDQ in effect (the MDQ Termination Date).  Upon the

effectiveness of such termination, Guarantor shall have no further liability

except that termination of the Guaranty shall not affect the validity or

enforceability of the Guaranty with respect to any Guaranteed Obligations

incurred or arising prior to termination of the Guaranty.

3.

The obligations of Guarantor hereunder are independent of the

obligations of any other guarantor and a separate action or actions may be

brought and prosecuted against Guarantor whether or not action is brought

against any other guarantor and whether or not any other guarantor be joined in

any such action or actions.  If Foundation Shipper waives, to the fullest

extent permitted by law, the benefit of any statute of limitations affecting its

liability under the PA, Guarantor likewise waives, to the fullest extent

permitted by law, the benefit of any statute of limitations affecting its

liability hereunder or the enforcement thereof.  Any payment by Foundation

Shipper or other circumstance which operates to toll any statute of limitations

as to Foundation Shipper shall operate to toll the statute of limitations as to

Guarantor.

4.

Guarantor hereby waives notice of acceptance of this Guaranty and

notice of any liability to which it may apply, and waives promptness, diligence,

presentment, demand of payment, protest, notice of dishonor or nonpayment of any

such liabilities, suit or taking of other action by Fayetteville against, and

any other notice to, any party liable thereon (including Guarantor or any other

guarantor).

5.

Fayetteville, to the extent agreed to by Foundation Shipper or

otherwise allowed by the PA, may at any time and from time to time without the

consent of, or notice to, Guarantor, without incurring responsibility to

Guarantor, and without impairing or releasing the obligations of Guarantor

hereunder, upon or without any terms or conditions and in whole or in part,

subject to the applicable Guaranty Cap:

(a)

make any change, amendment, or modification in the terms of any of

the Guaranteed Obligations, and the guaranty herein made shall apply to the

Guaranteed Obligations as so changed, amended or modified;

(b)

take and hold security for the payment of the Guaranteed

Obligations and sell, exchange, release, surrender, impair, realize upon or

otherwise deal with in any manner and in any order any property by whomsoever at

any time

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pledged or mortgaged to secure, or howsoever securing, the

Guaranteed Obligations or any liabilities (including any of those hereunder)

incurred directly or indirectly in respect thereof or hereof, and/or any offset

there against, and/or release any Person liable for all or any portion of the

Guaranteed Obligations;

(c)

act or fail to act in any manner referred to in this Guaranty

which may deprive Guarantor of its right to subrogation against Foundation

Shipper to recover full indemnity for any payments made pursuant to this

Guaranty; and/or

(d)

take any other action which would, under otherwise applicable

principles of common law, give rise to a legal or equitable discharge of

Guarantor from it liabilities under this Guaranty.

6.

No invalidity, irregularity or unenforceability of all or any part

of the Guaranteed Obligations or of any security therefor shall affect, impair

or be a defense to this Guaranty, and this Guaranty shall be primary, absolute,

irrevocable and unconditional notwithstanding the occurrence of any event or the

existence of any other circumstances which might constitute a legal or equitable

discharge of a surety or guarantor except indefeasible payment of an amount

equal to the applicable Guaranty Cap.

7.

This Guaranty is a continuing one and all liabilities to which it

applies or may apply under the terms hereof shall be conclusively presumed to

have been created in reliance hereon.  No failure or delay on the part of

Fayetteville in exercising any right, power or privilege hereunder shall operate

as a waiver thereof; nor shall any single or partial exercise of any right,

power or privilege hereunder preclude any other or further exercise thereof or

the exercise of any other right, power or privilege.  The rights and

remedies herein expressly specified are cumulative and not exclusive of any

rights or remedies which Fayetteville would otherwise have.  No notice to

or demand on Guarantor in any case shall entitle Guarantor to any other or

further notice or demand in similar or other circumstances or constitute a

waiver of the rights of Fayetteville to any other or further action in any

circumstances without notice or demand.  It is not necessary for

Fayetteville to inquire into the capacity or powers of Foundation Shipper or the

officers, directors, partners or agents acting or purporting to act on its

behalf.

8.

Guarantor hereby agrees with Fayetteville that it will not

exercise any right of subrogation which it may at any time otherwise have as a

result of this Guaranty (whether contractual, under Section 509 of the

Bankruptcy Code or otherwise) until all Guaranteed Obligations have been

indefeasibly paid in full (it being understood that Guarantor is not waiving any

right of subrogation that it may otherwise have but is only waiving the exercise

thereof as provided above).

9.

(a)

Guarantor waives any right (except as shall be required by

applicable statute and cannot be waived) to require Fayetteville to:  (i)

proceed against Foundation Shipper, any other guarantor of the Guaranteed

Obligations or any other party; (ii) proceed against or exhaust any security

held from Foundation Shipper, any other guarantor of

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the Guaranteed Obligations or any other party; or (iii) pursue any

other remedy in Fayettevilles power whatsoever.  Guarantor waives any

defense based on or arising out of any defense of Foundation Shipper, Guarantor,

any other guarantor of the Guaranteed Obligations or any other party other than

indefeasible payment of an amount equal to the applicable Guaranty Cap,

including, without limitation, any defense based on or arising out of the

disability of Foundation Shipper, Guarantor, any other guarantor of the

Guaranteed Obligations or any other party, or the unenforceability of the

Guaranteed Obligations or any part thereof from any cause, or the cessation from

any cause of the liability of Foundation Shipper other than indefeasible payment

of an amount equal to the applicable Guaranty Cap.

(b)

Guarantor waives all presentments, demands for performance,

protests and notices, including, without limitation, notices of nonperformance,

notices of protest, notices of dishonor, notices of acceptance of this Guaranty,

and notices of the existence, creation or incurring of new or additional

indebtedness.  Guarantor assumes all responsibility for being and keeping

itself informed of Foundation Shippers financial condition and assets, and of

all other circumstances bearing upon the risk of nonpayment of the Guaranteed

Obligations and the nature, scope and extent of the risks which Guarantor

assumes and incurs hereunder, and agrees that Fayetteville shall have no duty to

advise Guarantor of information known to it regarding such circumstances or

risks.

10.

In order to induce Fayetteville to enter into the PA, Guarantor

represents, warrants and covenants that:

(a)

Status.  Guarantor (i) is a duly organized and validly

existing corporation, in good standing under the laws of the jurisdiction of its

organization, (ii) has the corporate power and authority to own or lease its

property and assets and to transact the business in which it is engaged and

presently proposes to engage and (iii) is duly qualified and is authorized to do

business and is in good standing in each jurisdiction where the conduct of its

business requires such qualification, except for failures to be so qualified

which, individually or in the aggregate, could not reasonably be expected to

have a material adverse effect on the results of operations or financial

condition of Guarantor and its subsidiaries, taken as a whole.

(b)

Power and Authority.  Guarantor has the corporate

power and authority to execute, deliver and perform the terms and provisions of

this Guaranty and has taken all necessary corporate action to authorize the

execution, delivery and performance by it of this Guaranty.  Guarantor has

duly executed and delivered this Guaranty and this Guaranty constitutes the

legal, valid and binding obligation of Guarantor enforceable in accordance with

its terms, except to the extent that the enforceability hereof and thereof may

be limited by applicable bankruptcy, insolvency, fraudulent conveyance,

reorganization, moratorium or other similar laws affecting creditors rights

generally and by equitable principles (regardless of whether enforcement is

sought in equity or at law).

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(c)

No Violation.  Neither the execution, delivery or

performance by Guarantor of this Guaranty, nor compliance by it with the terms

and provisions hereof and thereof (i) will contravene any applicable provision

of any law, statute, rule or regulation, or any order, writ, injunction or

decree of any court or governmental instrumentality, (ii) will conflict or be

inconsistent with or result in any breach of any of the terms, covenants,

conditions or provisions of, or constitute a default under, or result in the

creation or imposition of (or the obligation to create or impose) any lien upon

any of the property or assets of Guarantor or any of its subsidiaries pursuant

to the terms of, any indenture, mortgage, deed of trust, credit agreement or

loan agreement or any other material agreement, contract or instrument to which

Guarantor or any of its subsidiaries is a party or by which it or any of its

property or assets is bound or to which it may be subject, or (iii) will violate

any provision of the certificate of incorporation, certificate of partnership,

partnership agreement, limited liability company agreement, by-laws or similar

documents, instruments or certificates (including amendments thereto) executed,

adopted or filed in connection with the creation, formation or organization of

Guarantor or any of its subsidiaries.

(d)

Governmental Approvals.  No order, consent, approval,

license, authorization or validation of, or filing, recording or registration

with (except as have been obtained or made), or exemption by, any governmental

or public body or authority, or any subdivision thereof, is required to

authorize, or is required in connection with, (i) the execution, delivery and

performance of this Guaranty or (ii) the legality, validity, binding effect or

enforceability of this Guaranty.

(e)

Litigation.  There are no actions, suits or

proceedings pending or, to the best knowledge of Guarantor, threatened (i) which

purport to affect the legality, validity or enforceability of this Guaranty or

(ii) that could reasonably be expected to have a material adverse effect on the

results of operations or financial condition of Guarantor and its subsidiaries,

taken as a whole.

11.

Guarantor covenants and agrees that on and after the date hereof

and until the Effective Date, Guarantor shall take, or will refrain from taking,

as the case may be, all material actions that are necessary to be taken or not

taken so that Foundation Shipper will be in material compliance with any

provision, covenant or agreement of Foundation Shipper contained in the PA.

12.

Subject to the applicable Guaranty Cap, Guarantor hereby agrees to

pay all out-of-pocket costs and expenses of Fayetteville in connection with the

enforcement of this Guaranty (including reasonable legal fees and expenses) and

the out-of-pocket costs and expenses of Fayetteville in connection with any

amendment, waiver or consent relating hereto (including reasonable legal fees

and expenses).

13.

This Guaranty shall be binding upon Guarantor and its successors

and assigns and shall inure to the benefit of Fayetteville and its successors

and assigns. Guarantor may not assign or transfer any of its rights or

obligations hereunder without the prior written consent of Fayetteville (and any

such attempted assignment or transfer without such consent shall be null and

void).

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14.

Except as otherwise provided herein, neither this Guaranty nor any

provision hereof may be changed, waived, discharged or terminated except with

the written consent of Guarantor and Fayetteville.

15.

Guarantor acknowledges that an executed (or conformed) copy of the

PA has been made available to Guarantor and Guarantor is familiar with the

contents thereof.

16.

All notices, requests, demands and other communications hereunder

will be in writing and will be deemed to have been duly given when (i) delivered

by hand (with written acknowledgment of receipt), (ii) sent by facsimile

transmission (with receipt confirmed by an electronically generated written

confirmation), or (iii) received by the addressee, if sent by a nationally

recognized delivery service or other traceable method, in each case to the

appropriate addresses and facsimile numbers set forth below (or to such other

addresses and facsimile numbers as a party may designate by notice to the

others):

If to Guarantor, to:

Southwestern Energy Company

2350 North Sam Houston Parkway East, Suite 125

Houston TX  77032

Facsimile:

 281-618-4820

Attention:

 General Counsel

If to Fayetteville, to:

Fayetteville Express Pipeline LLC

500 Dallas St., Suite 1000

Houston, Texas  77002

Facsimile:  713-369-9235

Attention: General Counsel of Gas Pipelines

17.

If a claim is ever made against Fayetteville for repayment or

recovery of any amount or amounts received in payment or on account of any of

the Guaranteed Obligations and Fayetteville repays all or part of said amount by

reason of (i) any judgment, decree or order of any court or administrative body

having jurisdiction over Fayetteville or any of its property or (ii) any

settlement or compromise of any such claim effected by Fayetteville with any

such claimant (including Foundation Shipper), then, subject to the applicable

Guaranty Cap, in such event Guarantor agrees that any such judgment, decree,

order, settlement or compromise shall be binding upon Guarantor, notwithstanding

any revocation hereof or other instrument evidencing any liability of Foundation

Shipper, and Guarantor shall be and remain liable to Fayetteville hereunder for

the amount so repaid or recovered to the same extent as if such amount had never

originally been received by Fayetteville.

18.

(a)  This Guaranty shall be binding upon the successors and

assigns of Guarantor (although Guarantor may not assign its rights and

obligations hereunder except in accordance with Section 13 hereof) and shall

inure to the benefit of and be enforceable by Fayetteville and its respective

successors and assigns.  THIS

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GUARANTY AND THE RIGHTS AND OBLIGATIONS OF FAYETTEVILLE AND OF

GUARANTOR HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE

LAW OF THE STATE OF TEXAS.  Any legal action or proceeding with respect

to this Guaranty may be brought in the courts of the State of Texas or of the

United States of America for the Southern District of Texas, in each case which

are located in Houston, and, by execution and delivery of this Guaranty,

Guarantor hereby irrevocably accepts for itself and in respect of its property,

generally and unconditionally, the jurisdiction of the aforesaid courts.

 Guarantor hereby further irrevocably waives any claim that any such courts

lack jurisdiction over Guarantor, and agrees not to plead or claim in any legal

action or proceeding with respect to this Guaranty brought in any of the

aforesaid courts that any such court lacks jurisdiction over Guarantor.

 Guarantor further irrevocably consents to the service of process out of

any of the aforementioned courts in any such action or proceeding by the mailing

of copies thereof by registered or certified mail, postage prepaid, to Guarantor

at its address set forth above, such service to become effective 30 days after

such mailing.  Guarantor hereby irrevocably waives any objection to such

service of process and further irrevocably waives and agrees not to plead or

claim in any action or proceeding commenced hereunder that service of process

was in any way invalid or ineffective.  Nothing herein shall affect the

right of Fayetteville to serve process in any other manner permitted by law or

to commence legal proceedings or otherwise proceed against Guarantor in any

other jurisdiction.

(b)

Guarantor hereby irrevocably waives any objection which it may now

or hereafter have to the laying of venue of any of the aforesaid actions or

proceedings arising out of or in connection with this Guaranty brought in the

courts referred to in clause (a) above and hereby further irrevocably waives and

agrees not to plead or claim in any such court that such action or proceeding

brought in any such court has been brought in an inconvenient forum.

(c)

WAIVER OF TRIAL BY JURY.  EACH OF GUARANTOR AND

FAYETTEVILLE (BY ITS ACCEPTANCE OF THE BENEFITS OF THIS GUARANTY) HEREBY

IRREVOCABLY WAIVES ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR

COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS

CONTEMPLATED HEREBY OR THEREBY.

19.

Guarantor hereby confirms that it is its intention that this

Guaranty not constitute a fraudulent transfer or conveyance for purposes of any

bankruptcy, insolvency or similar law, the Uniform Fraudulent Conveyance Act or

any similar Federal, state or foreign law.  To effectuate the foregoing

intention, if enforcement of the liability of Guarantor under this Guaranty for

an amount equal to the applicable Guaranty Cap would be an unlawful or voidable

transfer under any applicable fraudulent conveyance or fraudulent transfer law

or any comparable law, then the liability of Guarantor hereunder shall be

reduced to the maximum amount for which such liability may then be enforced

without giving rise to an unlawful or voidable transfer under any such law.

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20.

All payments made by Guarantor hereunder will be made without

setoff, counterclaim or other defense.

21.

Any provision of this Guaranty held to be invalid, illegal or

unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective

to the extent of such invalidity, illegality or unenforceability without

affecting the validity, legality and enforceability of the remaining provisions

hereof; and the invalidity of a particular provision in a particular

jurisdiction shall not invalidate such provision in any other

jurisdiction.

22.

This Guaranty reflects the whole and entire agreement of the

parties and, with the exception of the PA, supersedes all prior agreements

related to the subject matter hereof.

\*    \*    \*

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be

executed and delivered as of the date first above written.

GUARANTOR:

SOUTHWESTERN ENERGY COMPANY

By:\_\_\_\_/s/ GREG D. KERLEY\_\_\_\_\_\_\_\_\_\_

Name:

Greg D. Kerley

Title:

Executive Vice President & Chief Financial Officer

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