

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

ANR Pipeline Company

Docket No. RP07-99-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO
REFUND AND CONDITIONS, AND ESTABLISHING HEARING PROCEDURES

(Issued December 27, 2006)

1. On December 1, 2006, ANR Pipeline Company (ANR) filed a revised tariff sheet¹ pursuant to Article IV of ANR Pipeline Company's Rate Schedule X-64 Service Agreement with High Island Offshore System, L.L.C. (HIOS). The tariff sheet reflects an increase in the current monthly charge paid by HIOS to ANR from \$104,167 to \$354,302 for gas separation, dehydration and related services provided to HIOS under Rate Schedule X-64. ANR proposes an effective date of January 1, 2007 for its tariff sheet. As discussed below, the Commission will accept and suspend ANR's tariff sheet to be effective January 1, 2007, subject to refund and the outcome of the hearing established herein.

I. Background

2. Rate Schedule X-64 of ANR's Original Volume No. 2 is a Service Agreement dated August 4, 1977, between ANR and HIOS. Under the terms of this Service Agreement which was approved by Commission order issued July 6, 1978, in Docket No. CP78-134,² ANR provides gas measurement, liquids separation, dehydration and related services for HIOS at ANR's Grand Chenier, Louisiana facilities. Under the terms of Rate Schedule X-64, HIOS pays to ANR an annual charge equal to 66-2/3 percent of the annual cost of service for the Grand Chenier facilities. HIOS pays ANR monthly one-twelfth (1/12) of the annual service charge, which is redetermined as of January 1 of each year.

¹ Seventeenth Revised Sheet No. 570 to ANR's FERC Gas Tariff, Original Volume No. 2.

² *Michigan Wisconsin Pipe Line Co.*, 4 FERC ¶ 61,028 (1978).

II. Details of the Filing

3. ANR's proposed cost of service for Grand Chenier is \$6,377,402, based on twelve months of data ending September 30, 2006, as adjusted for known and measurable changes through December 31, 2006.³ Of the \$6,377,402 total, \$4,251,623 or 66-2/3 percent is attributable to HIOS. The proposed monthly service charge under Rate Schedule X-64 to be paid by HIOS to ANR effective January 1, 2007 is \$354,302.

4. ANR states that its rate base consists of test period plant additions of \$4,795,100 associated with the replacement and/or improvement of ANR's Grand Chenier facilities as a result of Hurricane Rita, net of any insurance reimbursements ANR expects to receive; \$191,482 of working capital, and \$148,921 of deferred income taxes. ANR states that its rate base, used to calculate its return component in the cost of service, recognizes the fully depreciated nature of the original Grand Chenier facilities. ANR calculated its rate of return of 11.13 percent based on the settlement of its most recently filed general rate proceeding in Docket No. RP94-43.⁴

5. ANR states that although the original Grand Chenier facilities are fully depreciated ANR has spent significant capital to repair, replace and enhance its facilities after Hurricane Rita. ANR states that its capital expenditures will be depreciated at 1.21 percent per year. ANR states that the depreciation rate was calculated using HIOS' net depreciable plant balance and depreciation rates from HIOS previous filing in Docket No. RP03-221, as adjusted in the Commission's Order on Initial Decision and Settlement Offer dated January 24, 2005.⁵

³ ANR's cost of service includes \$4,692,984 in operation and maintenance expenses, \$428,900 in depreciation expenses, \$683,937 in taxes, and a return expense of \$571,581.

⁴ Rate Schedule X-64 requires ANR to use the rate of return on file with the Commission at the annual redetermination date.

⁵ *High Island Offshore System, L.L.C.*, 110 FERC ¶ 61,043 (2005). Under Rate Schedule X-64, the Grand Chenier depreciation rate is derived from the remaining depreciable life of HIOS' facilities. In accordance with ANR's FERC Gas Tariff for Rate Schedule X-64, Original Volume No. 2, Article IV, ANR recomputes its depreciation rate to HIOS on the effective date of each HIOS filing. ANR notes that HIOS as part of its recently filed rate case in Docket No. RP06-540, has filed to change its depreciation rates. ANR states that depending on the outcome of that filing and its impact on the remaining life of HIOS' facilities, ANR will file to modify the depreciation rates and level of depreciation expense it has proposed in this filing.

6. ANR states its operation and maintenance expenses reflect the current annual cost associated with liquids separation and dehydration expenses, property insurance premiums, labor and associated benefits and administrative and general costs. ANR states that the operation and maintenance expenses include approximately \$2.6 million of uninsured expenses related to the clean-up and repair of damages caused by Hurricane Rita.

III. Notice and Responsive Pleadings

7. Notice of ANR's filing was published in the *Federal Register*, 71 FR 74,493 (2006) with comments, interventions and protests due as provided in the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2006)) all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. HIOS filed a motion to intervene, a protest, and requests for partial summary disposition, maximum five-month suspension period, hearing, and technical conference. On December 20, 2006, ANR filed an answer to HIOS' protest and on December 22, 2006, HIOS filed an answer to ANR's answer. Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), answers to protests and to answers are not accepted unless otherwise ordered by the Commission. We will accept ANR's and HIOS' answers because they further clarify the issues.

8. HIOS points out that ANR's proposed rate increase is nearly \$3 million more than the \$1.25 million per year that HIOS currently pays for the services it receives under Rate Schedule X-64. HIOS notes that the increase represents a 15 percent increase over the operating expenses currently approved by the Commission for HIOS in Docket No. RP03-221, and nearly a 10 percent increase to the total operating expenses that HIOS recently filed as part of its currently pending rate case in Docket No. RP06-540-000. HIOS states it will not earn its allowed rate of return in 2006 and does not expect to earn its allowed return in 2007.⁶ HIOS maintains that implementation of ANR's \$3 million rate increase on January 1, 2007 (without suspension, as proposed by ANR) would further exacerbate HIOS' earnings deficiency.

9. Moreover, HIOS asserts that ANR has failed to carry its burden of proof that the proposed increase is just and reasonable. HIOS states that for example, ANR has included in its rates significant non-recurring, prior period costs that it incurred as a result of Hurricane Rita. HIOS states that the Commission should remove such costs from

⁶ See *High Island Offshore System, L.L.C.*, Docket No. RP06-540-000, Statement of the Nature, the Reasons and the Basis for Filing.

ANR's proposed charge on summary disposition. HIOS states that ANR's attempt to recover past period non-recurring costs amounts to impermissible retroactive ratemaking and violates fundamental principles of the Commission's test period ratemaking policy.

10. Finally, HIOS asserts that the December 1 filing highlights the issue of whether Rate Schedule X-64, a service contract between two pipelines for liquids separation, dehydration and measurement remains in the public interest in the post-Order No. 636⁷ natural gas industry. HIOS states that in the unbundled natural gas pipeline industry, shippers who require liquids separation service should contract with and pay ANR or another service provider for the service they require. HIOS asserts that it is unjust and unreasonable and not in the public convenience and necessity to require that HIOS continue to pay ANR for services that HIOS does not need and that HIOS' shippers may not need.

11. HIOS requests that the Commission suspend the rates for the full five-month period, set the case for hearing, and establish a technical conference to consider whether the appropriate course of action is to abandon the service and require ANR to make the liquid separation services available to those shippers who require such services and want to contract directly with ANR to receive those services. HIOS states that such a technical conference would also provide ANR with an opportunity to answer questions that Commission Staff or intervenors might have about the Rate Schedule X-64 services.

12. In response ANR states that the costs relating to the damages caused by Hurricane Rita are properly recoverable in the cost of service of the Grand Chenier facilities under Rate Schedule X-64. ANR also states that HIOS' argument that hurricane-related costs are not recoverable because they are non-recurring, misconstrues the Rate Schedule X-64 contract. According to ANR, unlike a typical rate schedule entered into under Part 284, the Rate Schedule X-64 contract is a certificated case-specific agreement that requires HIOS to pay two-thirds of the cost of service of the Grand Chenier facilities if the costs were incurred to operate and maintain the facilities, whether they are projected to reoccur in the future or not.

⁷ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939 (1992), *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950 (1992), *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *aff'd in part, rev'd in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *cert. denied sub nom. Associated Gas Distributors v. FERC*, 520 U.S. 1224 (1997), *on remand*, Order No. 636-C, 78 FERC P 61,186 (1997), *order on reh'g*, Order No. 636-D, 83 FERC ¶ 61,210 (1998).

13. With regard to the unbundling issue raised by HIOS, ANR states that HIOS points to no support for its proposition that the Commission required pipelines to unbundle the type of liquids separation, dehydration and measurement services provided under Rate Schedule X-64. Further, ANR states that while HIOS now questions why ANR did not unbundle the Rate Schedule X-64 services (as ANR unbundled its upstream services on HIOS in its Order No. 636 restructuring), HIOS did not appear to believe such unbundling was necessary when it renewed the agreement multiple times, including in 1999 when it extended the term of agreement for an additional fifteen years beyond December 31, 2000.

14. ANR requests that the Commission reject HIOS' motion for partial summary disposition, reject HIOS' arguments with regard to unbundling and accept the revised tariff sheets, effective January 1, 2007, subject to refund and whatever further proceedings the Commission deems appropriate.

15. In its answer, HIOS reiterates its argument that ANR improperly included non-recurring costs in its filing and restates its requests for partial summary disposition, a maximum five-month suspension period, a hearing, and a technical conference.

IV. Discussion

16. We believe that ANR's proposed rate change raises cost of service issues which are best addressed in a hearing. Accordingly, we accept ANR's proposed tariff sheet for filing and suspend its effectiveness for the period set forth below, to become effective January 1, 2007, subject to refund. We reject HIOS' request for partial summary disposition as we find that ANR's filing raises genuine issues of material fact.

17. The Commission will deny HIOS' request for technical conference to consider whether the Rate Schedule X-64 service should be abandoned. In order to grant HIOS its requested relief, the Commission would have to proceed under NGA section 5 to find the existing contract between ANR and HIOS under which the Rate Schedule X-64 service is provided unjust and unreasonable. However, the Commission has discretion in determining whether to initiate a section 5 investigation.⁸ In the circumstances of this case, we will not exercise our discretion to investigate whether to modify the longstanding contractual arrangements between ANR and HIOS concerning the subject liquids separation, dehydration and measurement services performed by ANR. Order No. 636 addressed bundled sales and transportation contracts, not stand-alone liquids separation, dehydration and measurement contracts such as Rate Schedule X-64. Neither HIOS nor any other party sought a change in the Rate Schedule X-64 service when ANR unbundled its upstream services in its Order No. 636 restructuring proceeding.

⁸ *General Motors Corp. v. FERC*, 613 F.2d 939, 944 (D.C. Cir. 1979).

Moreover, in 1999 seven years after Order No. 636, HIOS agreed to amend its service agreement with ANR to eliminate its previous ability to terminate the agreement as of December 31, 2000 and annually thereafter, and instead extend the term of the agreement for 15 years commencing on January 1, 2001. HIOS does not allege that any changes in the circumstances surrounding the service have occurred since 1999, other than the apparent increased cost of service under the Rate Schedule X-64 agreement due to the damages caused by Hurricane Rita. Accordingly, we find no basis in this case to consider disturbing the existing contractual arrangements between the parties.⁹

V. Suspension

18. Based upon a review of the filing, the Commission finds that the proposed tariff sheet listed in footnote no. 1 of this order has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariff sheet for filing and suspend its effectiveness for the period set forth below.

19. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC & 61,293 (1980) (five-month suspension). It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC & 61,197 (1980) (one-day suspension). Such circumstances exist here where Rate Schedule X-64 provides for an annual redetermination of rates. Accordingly, the Commission will exercise its discretion to suspend the revised tariff sheet listed in footnote no. 1 of this order for a shorter period and permit the tariff sheet to take effect January 1, 2007, subject to refund.

The Commission orders:

(A) The tariff sheet listed in footnote no. 1 of this order is accepted and suspended, to be effective January 1, 2007, subject to refund and to the outcome of the hearing established in this order.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8 and 15 thereof, a public hearing will be held in Docket No. RP07-99-000 concerning the lawfulness of ANR's proposed rates in this filing.

⁹ *See Iroquois Gas Transmission System L.P.*, 69 FERC ¶ 61,165 at 61,631 (1994).

(C) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304, must convene a prehearing conference in this proceeding to be held within twenty (20) days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426. The prehearing conference shall be held for the purpose of establishment of a procedural schedule. The Presiding Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the Commission's rules of practice and procedure.

(D) HIOS' requests for summary disposition and a technical conference are denied.

By the Commission

(S E A L)

Magalie R. Salas,
Secretary.