UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ANR Pipeline Company Docket No. RP07-436-000

ORDER ON TARIFF FILING

(Issued May 31, 2007)

1. On May 1, 2007, pursuant to Sections 15.5 and 15.8 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff, Second Revised Volume No. 1, ANR Pipeline Company (ANR) filed Forty-Seventh Revised Sheet No. 17, and supporting work papers to change its Cashout Surcharge to $2.1509 per Dth from $1.2424 per Dth. Alternatively, ANR seeks waiver of section 15 of its tariff to retain the currently effective Cashout Surcharge of $1.2424, subject to the condition that ANR retains the right to recover all prudently incurred costs in connection with cashout activity on its system as more fully described below. The Commission accepts ANR's alternative proposal to retain its currently effective Cashout Surcharge, and rejects Forty-Seventh Revised Sheet No. 17 as moot.

Background

2. Sections 15 and 16 of ANR's GT&C provide for the pipeline to "cash out" its shippers' net monthly imbalances. An imbalance occurs when the shipper delivers to the pipeline a different volume of natural gas than the shipper receives from the system. The pipeline cashes out by either, in effect, (1) selling gas to shippers who took more gas from the system than they delivered for transportation, thereby incurring a "negative" imbalance, or (2) buying gas from shippers who took less gas from the system than they delivered to it, thereby incurring a "positive" imbalance. These sales and purchases of gas take place at index prices provided for in ANR's tariff.

3. Before the cashout takes place, each shipper is given the opportunity to cure its net monthly imbalance by trading that imbalance with a shipper who has an imbalance in the opposite direction. The opportunity to trade imbalances occurs in the month following

the month in which the imbalance occurs. If, after the trading period is over, the shipper still has an imbalance, then the cashout takes place.

4. In the proceedings in Docket No. RP02-335-000 *et al.*,[1] the Commission determined that ANR's then existing tariff mechanism for cashing out shipper imbalances was not producing just and reasonable results and established a hearing, pursuant to section 5 of the Natural Gas Act (NGA), to determine a revised just and reasonable cashout mechanism.[2] Among other things, the Commission was concerned that ANR's cashout mechanism did not give plant thermal reduction (PTR) shippers an adequate opportunity to resolve their imbalances. PTR shippers are typically producers who contract with processing plants to remove liquefiable hydrocarbons from the gas they have transported on ANR's system. There are four processing plants in the Southeast production area on ANR's system and ANR has a contract with each of these plants that governs the processing of gas that has been committed to the plant by ANR's shippers.

5. ANR transports the PTR shippers' gas to the processing plants, where the liquefiables are removed and the gas is then reinjected into ANR's pipeline for transportation to its ultimate destination. Removal of the liquefiables causes a reduction of the heating content of the gas ANR transports from the processing plant (*i.e.,* plant thermal reduction). This "plant shrinkage" must be made up by the shipper through nominating additional gas to ANR. Therefore, ANR requires that, whenever gas is processed, each PTR shipper must enter into a separate "Associated Liquefiables Agreement" for interruptible transportation service under ANR's Rate Schedule ITS, which requires the shipper to nominate additional make-up gas to replace the shrinkage that took place at the processing plant. However, the plant operator may not provide final figures to the shipper for the plant thermal loss until 45 days or more after the end of the month in which the processing took place. As a result, a PTR shipper may not know the exact amount of any imbalance it incurred during a particular month until the middle of the second month after the imbalance took place or even later, which would be after the trading imbalance period ended.

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[1] *ANR Pipeline Co.,* Order Conditionally Accepting and Suspending Tariff Sheets and Establishing a Technical Conference, 99 FERC ¶ 61,232 (May 31, 2002); Order After Technical Conference Accepting Tariff Sheet and Establishing a Hearing and Settlement Procedures, 101 FERC ¶ 61,123 (October 31, 2002); Order on Rehearing, 103 FERC ¶ 61,065 (April 15, 2003); Order on Initial Decision, 109 FERC ¶ 61,138 (November 3, 2004); Order on Rehearing and Compliance Filing, 111 FERC ¶ 61,113 (April 20, 2005); and Order on Compliance Filing, Clarification and Rehearing, 112 FERC ¶ 61,286 (September 15, 2005).

[2] *ANR Pipeline Co.,* 101 FERC ¶ 61,123 (2002).

6. The Commission was concerned that the delay in receiving this information made it difficult for PTR shippers to resolve their imbalances. Specifically, it could be difficult for PTR shippers to trade imbalances, since ANR's tariff generally required such trading to take place in the month immediately following the month in which the imbalances occurred, a time before the PTR shipper would finally know the amount, if any, of its imbalance. Thus, when the shipper received the prior period adjustment made by the plant operator in the second month following the month in which the imbalance occurred it would then put the PTR shipper out of balance and there would be no opportunity to cure that imbalance through trading.

7. In a November 3, 2004 Order (November 3 Order)[3], the Commission found that this problem had been resolved by ANR's revision to section 15.6(i) of its GT&C in a separate proceeding in Docket No. RP01-612-000,[4] concerning the *pro forma* agreement for Associated Liquefiables. Revised section 15.6(i) allows shippers during each monthly trading period to trade not only the net monthly imbalances they incurred during the immediately preceding month but also to trade any imbalances arising from prior period adjustments related to any previous month. Thus, PTR shippers may trade imbalances after learning of a change in their imbalance activity, even if the imbalance to which the related adjustment occurred more than one month before the adjustment.

8. In the April 20, 2005 Order, the Commission found on rehearing that ANR's tariff change in section 15.6(i), giving PTR shippers an opportunity to trade imbalances arising from past period adjustments, did not go far enough to address the problems faced by PTR shippers who incur imbalances as a result of prior period adjustments.[5] The Commission pointed out that ANR only requires net monthly imbalances to be cashed out. As a result, shippers need not cash out imbalances incurred during the course of a month, as long as they bring themselves into balance by the end of the month. Thus, if a shipper is out of balance on a net basis toward the end of the month, the shipper may correct that net imbalance by incurring offsetting imbalances at the end of the month. This, in essence, gives shippers a window within which to make up their imbalances on an in-kind basis before they are subject to cashout. Therefore, the Commission held that PTR shippers should be offered a similar opportunity to resolve imbalances which arise as a result of prior period adjustments on an in-kind basis during the month in which the PTR shippers receive from the plant operator the prior period plant thermal reduction adjustment. In other words, any prior period adjustment that a PTR shipper receives during a month should be treated in the same manner as any other daily imbalance that shippers incur with respect to gas actually flowing during that month.

[3] *ANR Pipeline Co.*, 109 FERC ¶ 61,138 (2004).

[4] *ANR Pipeline Co.*, 101 FERC ¶ 61,375 (2002).

[5] *ANR Pipeline Co.*, 111 FERC ¶61,113 (2005).

9. The Commission stated that, with this change, PTR shippers would have two opportunities to resolve imbalances arising from prior period adjustments before being required to cash them out pursuant to ANR's high/low weekly index price. First, a PTR shipper would be able to resolve the imbalance on an in-kind basis by incurring an offsetting imbalance during the remainder of the month in which it is informed of the prior period adjustment. Second, it would have an opportunity to trade that imbalance during the monthly trading period in the month after the shipper was informed of the prior period adjustment. In this way, PTR shippers would have the same ability to resolve their imbalances without having to cash them out, as ANR's shippers have with respect to all other imbalances.

10. The April 20, 2005 Order also accepted ANR's buydown proposal to reduce its 2.4 Bcf gas imbalance (Historical Gas Deficiency) resulting from the previous mechanism by purchasing sufficient gas to gradually reduce the deficiency over a 36-month period. ANRs' proposal provided for review of its purchases to reduce the past deficiency in its annual reconciliation filings. The Commission required ANR to submit tariff language concerning its buydown proposal for review, which the Commission accepted in a September 15, 2005 Order.[6]

Details of the Filing

11. ANR proposes to increase its Cashout Surcharge to $2.1509 per Dth, effective June 1, 2007. Alternatively, ANR seeks waiver of Section 15 of its tariff in order to retain the currently effective Cashout Surcharge of $1.2424 per Dth set forth in currently effective Forty-Sixth Revised Sheet No. 17, subject to the condition that ANR's right to recover all prudently incurred costs in connection with cashout activity on its system both during the 2006 period as well as in future periods, including the costs of its purchases to eliminate the Historical Gas Deficiency.

12. ANR's filing reflects a beginning balance of $12.1 million and net cash-out activity during calendar year 2006 of $1.1 million. The net cash-out activity includes $9.4 million of gas costs from purchases made by ANR to eliminate the entire remaining balance of the Historical Gas Deficiency. These gas purchase costs result in an increase in the surcharge to $2.1509 per Dth. ANR states that since these purchases have eliminated the Historical Gas deficiency, it will not need to incur any additional costs in 2007 with respect to the Historical Gas Deficiency. ANR expects that the 2008 Cashout Surcharge will be substantially lower than the proposed $2.1509 per Dth proposed in this filing. ANR asserts that allowing the existing $1.2424 per Dth surcharge to remain in effect will avoid both a substantial upward swing in the surcharge this year, and a potentially substantial downward swing in the surcharge the following year.

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[6] *ANR Pipeline Co.*, 112 FERC ¶ 61,286 (2005).

Notice and Protest and Answer

13. Public notice of the compliance filing was issued, allowing for protests to be filed as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2006)), all timely motions to intervene and any motions to intervene out of time filed before the issuance date of this order are granted. On May 14, 2007, Indicated Shippers[7] filed a protest. On May 22, 2007, ANR filed an answer to Indicated Shippers' protest. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept ANR's answer, because it has provided information that assisted us in our decision-making process.

14. Indicated Shippers state that Attachment 1[8] to ANR's filing shows a surplus collection by ANR of $10,502,429 after ANR's purchase of all replacement gas volumes at a cost of $7,409,376 as of December 31, 2006. Indicated Shippers state that, with the continuing high spreads in ANR's cashout pricing for January 1 through May 31, 2007, and ANR's continuing collection of the cashout surcharge since January 1, 2007 through the present, it is conceivable that ANR has already substantially recovered the remaining $12,101,887 negative balance (largely related to historical activity) set forth in its cashout account.

15. Indicated Shippers note that imbalances on ANR's system have steadily fallen over the past three years from 12,228,828 Dth in 2004 to 5,625,405 in 2006, with PTR shippers bearing the major brunt of these surcharges because they are required to balance based on estimates, and thus they cannot fully eliminate imbalances. Additionally, Indicated Shippers state that while PTR shippers bear the substantial surcharges to eliminate ANR's historical cashout account, under ANR's cashout mechanism, once the negative historical cashout balance is eliminated in ANR's next cashout report filing, any cashout surplus will be refunded to all transportation customers.

16. ANR responds that less than fifty percent of the imbalances are created by PTR shippers. Additionally, ANR notes that as a result of the changes made to the cashout mechanism in Docket No. RP02-335, Indicated Shippers are permitted to treat any imbalances resulting from prior period adjustments as any other imbalance created during the month. In others words, ANR states that to the extent that actual imbalance data

[7] The Indicated Shippers consist of Chevron U.S.A. Inc., ConocoPhillips Company and Shell Offshore Inc.

[8] Attachment 1 summarizes the net cashout activity on a system-wide basis, monthly from January 2006 through December 2006, and in total.

results in a prior period adjustment, PTR shippers can fully eliminate such imbalances through netting and trading in the following month like any other shipper.

17. Indicated Shippers state that while the Commission may deem it appropriate for cashout over-recoveries to generally be allocated to all transportation shippers, ANR's proposed cashout surcharge was designed primarily to recover costs in ANR's historical cashout deficiency account, which was accumulated over several years under ANR's previous cashout mechanism.

18. ANR disputes this assertion by Indicated Shippers and responds that its surcharge is designed to recover the costs of all imbalances, not just the historical deficiency. ANR states that its cashout account is a result of many variables, including monthly purchases and sales to and from shippers to eliminate imbalances, gas purchases and sales to and from third parties to make up current deficiencies or sell excess gas, and collection of the surcharge.

19. Indicated Shippers note that imbalances have steadily decreased, thereby reducing the eligible throughput subject to the cashout surcharge which largely contributes to the continuing high level of the current surcharge. Indicated Shippers state that the high/low cashout pricing spreads have been unusually wide, therefore causing the cashout surcharge to be unusually high, and that this effect was not fully contemplated at the time the mechanism was adopted in Docket No. RP02-335. Indicated Shippers state that, while this has resulted in ANR's ability able to accelerate paying off the historical deficit, imbalance shippers have to pay the cashout under the high/low spread, and the additional surcharge. Indicated Shippers state that these developments justify a limited modification to ANR's current cashout surcharge once ANR's negative cashout balances are eliminated.

20. ANR states that Indicated Shippers offers no support for its conclusion that the wide high-low spreads were not fully contemplated, and states that, in fact, section 15.8 of its GT&C contemplates that the high-low spreads might enable ANR to make additional gas purchases that would reduce the historical Gas Deficiency over a period shorter than 36 months.

21. Indicated Shippers request that the Commission relieve ANR's imbalance shippers from the burden of ANR's alternative cashout surcharge of $1.2424 per Dth for the next twelve months by ordering ANR to either (1) terminate the surcharge within 30 days after its total cashout activity in 2007 (or through April 2008, if necessary) equals $12,101,887, or (2) refund to shippers bearing the surcharge between June 1, 2007 and May 31, 2008, the net surplus in ANR's cashout account as of May 31, 2008, up to the level of surcharges paid by these shippers to ANR during this same period, rather than to all ANR's transportation customers.

22. ANR states that, notwithstanding that the cash balance may be at zero, a surcharge may be needed to reimburse ANR for amounts that it must spend to purchase replacement gas. Additionally, a zero gas imbalance at any one point in time does not mean that such balance will not increase in future months. Therefore, ANR states that the surcharge should not terminate if the cash balance happens to reach zero at any particular time. ANR states that the mechanism is an annual mechanism, that the reconciliation should continue to be made on an annual basis, and that ANR should not have to terminate the surcharge in the middle of the annual period required by the tariff. ANR states that any change in the existing tariff can only be made prospectively under Section 5 of the Natural Gas Act. ANR states that its alternative proposal will significantly ameliorate the impact of the mechanism on shippers creating imbalances, as it avoids a 73 percent increase that is otherwise required by the tariff.

23. ANR states that Indicated Shippers' real concern is that cashout over-recoveries are refunded as a negative surcharge to all shippers, as opposed to just the shippers paying the surcharge. Though not unsympathetic to this concern, ANR notes that the Commission has rejected a proposal to refund gains by means of an adjustment to the cashout price because it would encourage imbalances.[9] ANR explains that the purpose of refunding gains to all shippers is to prevent a situation in which shippers are indifferent to creating imbalances because they can expect refunds.

Discussion

24. The Commission accepts ANR's alternative proposal of allowing the Cashout Surcharge of $1.2424 per Dth to remain in effect through May 31, 2008. Therefore, Forty-Sixth Revised Sheet No. 17 will remain in effect, and Forth-Seventh Revised Sheet No. 17 is rejected as moot.

25. The Commission will not adopt Indicated Shippers' proposal to either terminate the surcharge within 30 days after its total cashout activity in 2007 (or through April 2008, if necessary) equals the remaining balance reported in ANR's worksheets, or refund any net surplus in ANR's cashout account solely to the shippers paying the surcharge. As Indicated Shippers note, cashout activity has greatly decreased since the Commission revised ANR's cashout mechanism, and ANR's answer states that less than fifty percent of the imbalances in 2006 were PTR shipper imbalances. Additionally, PTR shippers have been given the same opportunities as other shippers to resolve imbalances. A PTR shipper is able to resolve imbalances on an in-kind basis by incurring an offsetting imbalance during the remainder of the month in which it is informed of the

[9] *ANR Pipeline Co.*, 82 FERC ¶ 61,080 (1998). ANR proposes, however, to consider, in its next annual reconciliation filing, the issue of a mechanism to refund negative surcharges to imbalance shippers in a manner that eliminates the incentive to remain in imbalance, and to request any tariff changes at that time if warranted.

prior period adjustment. Finally, a PTR shipper has an opportunity to trade that imbalance during the monthly trading period in the month after the prior period adjustment was received. As a result, the Commission believes that PTR shippers have the same ability to resolve their imbalances without having to cash them out, as ANR's other shippers have with respect to imbalances. Indicated Shippers state that they are required to balance "based on estimates", but fail to elaborate. If the prior period adjustments that PTR shippers are receiving are estimates, not specific imbalances amounts, this should be brought to the attention of the Commission with specificity.

26. The Commission also disagrees with Indicated Shippers that ANR's Cashout Surcharge was designed primarily to resolve the Historical Gas Deficiency. The Cashout Surcharge was designed as a true-up mechanism, to financially reconcile ANR's cashout activity for the prior year. The Commission agrees with ANR that the surcharge is a result of many variables, including monthly purchases and sales to and from shippers to eliminate imbalances, gas purchases and sales to and from third parties to make up current deficiencies or sell excess gas, and collection of the surcharge.

27. The Commission's regulations at 18 C.F.R. § 284.12(b)(2)(v) provide that a pipeline must credit to shippers, in a manner prescribed in its tariff, net penalty revenues. Section 15.5(c) of ANR's GT&C provides that any positive balance of net cashout activity shall be divided by the actual throughput for the applicable year to calculate a negative surcharge per Dth. Thus, the Cashout Surcharge may be negative, as well as positive. In addition, ANR's proposal to continue to charge the currently effective Cashout Surcharge rather than the one it could justify according to its tariff, reduces the chance of over-collection, or at least the amount that might be over-collected, and ANR predicts a marked reduction in the surcharge next year.

<u>The Commission orders</u>:

Forty-Seventh Revised Sheet No. 17 to ANR's FERC Gas Tariff, Second Revised Volume No. 1 is rejected as moot, and waiver of Section 15 of ANR's FERC Gas Tariff is granted to allow Forty-Sixth Revised Sheet No. 17 to remain in effect, with the cashout surcharge of $1.2424 per Dth.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.