

121 FERC ¶ 61,301
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 Nos. RP08-97-000
and RP08-97-001

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

(Issued December 28, 2007)

1. On November 30, 2007, ANR Pipeline Company (ANR) filed revised tariff sheets¹ pursuant to Article IV of ANR Pipeline Company's Rate Schedule X-64 Service Agreement with High Island Offshore System, L.L.C. (HIOS). Eighteenth Revised Sheet No. 570 reflects an increase in the current monthly charge paid by HIOS to ANR from \$153,100 to \$297,667 for gas separation, dehydration and related services provided to HIOS under Rate Schedule X-64, and includes an adjustment to defer hurricane related expenditures pursuant to a settlement of ANR's last annual redetermination filing. On December 14, 2007, in Docket No. RP08-97-001, ANR filed an errata to correct several schedules in its primary and alternate cases in the instant docket. ANR proposes an effective date of January 1, 2008. As discussed below, the Commission will accept and suspend ANR's Eighteenth Revised Sheet No. 570 to be effective January 1, 2008, subject to refund and the outcome of the hearing established herein. The Commission rejects as moot Alternate Eighteenth Revised Sheet No. 570.²

I. Background

2. Rate Schedule X-64 of ANR's Original Volume No. 2 is a Service Agreement

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

² Eighteenth Revised Sheet No. 570 was filed under the assumption that the Commission would accept the uncontested settlement filed in the previous Rate Schedule X-64 rate redetermination in Docket No. RP07-99-000. That uncontested settlement was accepted on December 21, 2007. Alternate Eighteenth Revised Sheet No. 570, was filed in the event that the settlement was not accepted, or yet acted upon, and is therefore moot.

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. CP78-134,³ 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 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.

II. Details of the Filing

3. ANR's proposed cost of service for Grand Chenier is \$5,122,180, based on twelve months of data ending September 30, 2007 as adjusted for known and measurable changes through December 31, 2007.⁴ Of the \$5,122,180 total, \$3,414,803 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, 2008 is \$297,667.

4. ANR states that its rate base consists of test period plant of \$4,746,544 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 has received, and the deferral of approximately \$4.0 million of plant additions to the settlement of ANR's last rate proceeding in Docket No. RP07-99-000; \$260,450 of working capital, and \$95,243 of accumulated 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. RP94-43.⁵

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 using

³ *Michigan Wisconsin Pipe Line Co.*, 4 FERC ¶ 61,028 (1978).

⁴ ANR's cost of service includes \$3,323,178 in operation and maintenance expenses, \$439,852 in depreciation expenses, \$812,472 in taxes, and a return expense of \$546,678.

⁵ Rate Schedule X-64 requires ANR to use the rate of return on file with the Commission at the annual redetermination date.

HIOS' 13 year remaining life agreed to in the settlement of its last rate filing in Docket No. RP06-540.⁶

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 \$624,341 of 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 issued December 4, 2007, with comments, interventions and protests due as provided in the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2007)), 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 and protest, and requests for partial summary disposition, maximum five-month suspension period, and hearing. On December 19, 2007, ANR filed an answer to HIOS' protest. Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), answers to protests are not accepted unless otherwise ordered by the Commission. We will accept ANR's answer because it further clarifies the issues.

8. HIOS objects to many aspects of ANR's filing, some of which are discussed below.

9. HIOS asserts that ANR's filing is incomplete and contains significant errors and omissions. For example, HIOS states that Statement K as filed is entitled "Comparison of Total Jurisdictional Revenues with Cost of Service." However, it observes that Statement K is reserved in the Commission's regulations.⁷ In addition, HIOS contends that at least one Statement, Statement G, is incomplete. It maintains that Statement G requires a company to show, among other things, the total revenues from jurisdictional and non-jurisdictional services, as well as credits to cost of service.⁸ HIOS asserts that Statement G, as filed by ANR, only provides a comparison of the Grand Chenier revenues generated from HIOS under Rate Schedule X-64 under the present and the proposed monthly service charge.

⁶ 120 FERC ¶ 61,150 (2007).

⁷ 18 C.F.R. § 154.312(q) (2007).

⁸ 18 C.F.R. § 154.312(j)(1) (2007).

10. HIOS notes that the schedules filed by ANR for the primary case (Eighteenth Revised Sheet No. 570) and the alternate case (Alternate Eighteenth Revised Sheet No. 570) are not consistent with the transmittal letter or the ANR witness's testimony.

11. HIOS argues that ANR is improperly including Hurricane Rita related costs that may ultimately be recovered from insurance, and that ANR does not even estimate what its insurance recovery may be. HIOS contends that this could result in double recovery of approximately \$0.6 million. HIOS claims that of the insurance reimbursements recovered so far, a disproportionately small portion of that recovery may have been allocated to the Grand Chenier facility. Further, HIOS asserts that ANR is proposing to recover costs in the revised rate for previous years charges that pre-date the base period, and costs that may be more appropriately allocated to other shippers. HIOS states that ANR has provided no information regarding the costs and rates paid by other shippers using the Grand Chenier facilities.

12. HIOS requests that the Commission suspend the rates for the full five-month period, set the case for hearing, and hold an evidentiary hearing to examine the costs proposed by ANR. HIOS states that such a hearing would provide HIOS and the Commission an opportunity to explore fully the lack of support and other shortcomings in ANR's filing.

13. Additionally, HIOS requests summary disposition of three issues, requesting that the Commission: (1) either require ANR to place the \$2.2 million of insurance proceeds it has received into accumulated reserves, or require ANR to defer recovery of the \$1.8 million of plant investment and the \$0.6 million of operation and maintenance expense until all insurance receipts are received and ANR's out-of-pocket costs are known with certainty; (2) require ANR to re-submit its proposal with Statements that provide a statement of revenues and credits for other shippers directly utilizing, or otherwise paying for, the Grand Chenier facilities; and (3) direct ANR to calculate the cost of service using data that are from the rate case and specific to Grand Chenier, rather than allocating unverifiable system-wide costs to HIOS.

14. In response, ANR maintains 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 points out that HIOS' argument that hurricane-related costs are not recoverable because they are non-recurring, miscomprehends 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.

15. While ANR acknowledges that clerical errors were made in the filing, ANR asserts that the errors relied on by HIOS are non-substantive administrative errors, which ANR promptly corrected in an errata (Docket No. RP08-97-001) when the errors were pointed out in HIOS' pleading. Additionally, ANR argues that these errors do not result in failure to meet the burden of proof or prohibit the Commission from fully analyzing the proposed rate redetermination. ANR states that its filing provides all relevant information to document the cost of service for the Grand Chenier facilities and the annual rate redetermination under Rate Schedule X-64. ANR asserts that the alleged "inconsistent" and "missing" statements referenced by HIOS are irrelevant to the filing and do not need to be filed.

16. ANR requests that the Commission reject HIOS' motion for partial summary disposition, as HIOS' contentions are erroneous as a matter of law and policy, and at most raise factual issues. ANR states that the uncontested Settlement accepted in Docket No. RP07-99 provides that hurricane-related costs, net of any insurance reimbursements received by ANR, will be deferred, and thus, the insurance reimbursements are appropriately being deferred as well. ANR argues that Rate Schedule X-64 is based on two-thirds of the cost of the Grand Chenier facility regardless of whether ANR is recovering any or all of the other one-third cost of the facility, and that the remaining costs of the facility, or revenues theoretically relating to such costs, are simply not a part of the calculation of HIOS' rate. ANR states that the costs ANR does not recover from HIOS are embedded in ANR's system-wide rates, of which ANR does not charge its system-wide shippers separately for the cost of this facility, as it does HIOS under Rate Schedule X-64. Finally, ANR states that the manner in which it calculated income and other taxes attributable to the Grand Chenier facility is reasonable and certainly is not appropriate for summary disposition.

17. ANR disputes HIOS' claim that "until the amount of insurance is known," for reimbursement of Hurricane Rita related expenses "the exact amount of the costs incurred cannot be known." ANR states that the costs incurred in 2007 to repair damage caused by Hurricane Rita are clear and precisely known. ANR also disputes HIOS claim that the hurricane-related costs are improperly included in the cost of service, and notes that Commission policy allows for the recovery of these extraordinary costs. ANR states that while costs not reasonably expected to occur every year must usually be normalized over a period of years, there is no need to normalize such costs under Rate Schedule X-64, because the rates are redetermined annually.

18. ANR requests that the Commission accept the revised tariff sheet, effective January 1, 2008, subject to refund and whatever further proceedings the Commission deems appropriate.

IV. Discussion

19. We find that ANR's proposed rate change raises cost of service issues which are best addressed in a hearing. Accordingly, we accept and suspend ANR's primary tariff sheet to become effective January 1, 2008, subject to refund and hearing.

20. The Commission does not have sufficient evidence to summarily dispose of the issues sought by HIOS. There is insufficient evidence to determine whether 2007 hurricane repair costs and related insurance reimbursements should be included or eliminated from the proposed rates. Similarly, whether the calculation of the cost of service for the Grand Chenier facilities is using direct cost data specific to the Grand Chenier facilities or ANR system-wide costs for income and other taxes is disputed by the parties, and thus the issue cannot be disposed of summarily. We are setting for hearing the appropriateness of all inputs to the Rate Schedule X-64 calculation, and decline to decide before hearing what Grand Chenier costs are properly includable in the rate restatement. Thus we deny HIOS' request for summary disposition, and set all issues for hearing.

V. Suspension

21. Based upon a review of the filing, the Commission finds that proposed Eighteenth Revised Sheet No. 570 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.

22. 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 Eighteenth Revised Sheet No. 570 for a shorter period and permit the tariff sheet to take effect January 1, 2008, subject to refund.

The Commission orders:

(A) Eighteenth Revised Sheet No. 570 is accepted and suspended, to be effective January 1, 2008, 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. RP08-97-000 concerning the lawfulness of ANR's proposed rates in this filing.

(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' request for summary disposition is denied.

(E) Alternate Eighteenth Revised Sheet No. 570 is rejected as moot.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.