122 FERC ¶ 61,062
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 28, 2008

In Reply Refer To:
ANR Pipeline Company
Docket No. RP08-145-000

ANR Pipeline Company
717 Texas Street
Houston, TX 77002-2761

Attention: Dean Ferguson
Vice President, Marketing and Business Development

Reference: Eighth Revised Sheet No. 162.01 and Third Revised Sheet No. 162.02 to FERC Gas Tariff, Second Revised Volume No. 1

Dear Mr. Ferguson:

1. On December 28, 2007, ANR Pipeline Company (ANR) filed the referenced tariff sheets to remove the ten-year term matching cap from its right of first refusal (ROFR) bidding process. The tariff sheets are accepted effective February 1, 2008, as proposed.

2. On October 31, 2002, the Commission issued its Order on Remand in Docket No. RM98-10-011,[1] in which the Commission addressed the remanded issues in *Interstate Natural Gas Association v. FERC.*[2] In *INGAA*, the United States Court of Appeals for the District of Columbia Circuit remanded to the Commission certain issues

[1] *Regulation of Short Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, 101 FERC ¶ 61,127 (2002) (Order on Remand).

[2] 285 F.3d 18 (D.C. Cir. 2002) (*INGAA*).

regarding the Commission's Order No. 637, *et al*.[3] In its Order on Remand, the Commission, *inter alia*, eliminated the five-year term matching cap for existing capacity subject to a ROFR. On January 29, 2004, the Commission issued its Order on Rehearing and Clarification,[4] and affirmed its decision to remove the five-year term matching cap. On October 28, 2005, the D.C. Circuit upheld the Commission's Order on Remand.[5] The Order on Remand resulted in the Commission's approval of proposals to remove the five year term matching cap for several pipelines.[6]

3. ANR states that its removal of its ten year matching term cap is consistent with the Commission's goal of placing capacity into the hands of customers who value it the most. In this regard, ANR notes that several recent ROFR open seasons have resulted in bids and terms in excess of ten years, and as such ANR believes the market will be most efficiently served by removing the term matching cap from ANR's tariff, consistent with Commission policy.

4. Public notice of the filing was issued on January 2, 2008. Interventions and protests were due on or before January 9, 2008. Pursuant to Rule 214 (C.F.R. § 385.214 (2007)), all timely filed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Integrys Energy Services, Inc. (Integrys) filed comments.

5. Integrys argues the proposed revisions will, if approved, materially and adversely affect Integrys' and other suppliers' ability to procure and retain pipeline capacity necessary to serve end-use customers, particularly those located in constrained areas of ANR's system, that have elected to receive service from competitive commodity

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[3] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,091 (February 9, 2000); *clarified*, Order No. 637-A, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,099 (May 19, 2000); *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (July 26, 2000); *aff'd in part and remanded in part sub nom. Interstate Natural Gas Association of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002); *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom., American Gas Association v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

[4] 106 FERC ¶ 61,088 (2004).

[5] *American Gas Association v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

[6] *See, e.g., Columbia Gas Transmission Corp*., 120 FERC ¶ 61,289 (2007) and *Texas Eastern Transmission, L.P.*, 113 FERC ¶ 61,307 (2005).

suppliers, such as Integrys. Integrys argues that removing the term cap, as ANR proposes, would enable local distribution companies (LDCs) to purchase capacity for long periods (twenty, thirty, or more years), in effect transferring oversight of such market power to state utility commissions who may have local reasons to authorize the LDC to proceed with such holdings without risk of cost recovery or loss, and without consideration of adverse competitive market consequences. Further, Integrys argues that it and other marketers are at a major disadvantage to enter into long term contracts like LDCs, because of the exigencies of the competitive environment in which marketers operate. Integrys states that competitive markets do not allow long term pipeline capacity commitments, and if a competitive marketplace is to continue, the LDCs should be placed or kept on an even footing with suppliers. Therefore, Integrys argues that the impact of ANR's proposed revision not only threatens to erode marketers' customer base in the short-term, but is also likely to stifle competition in the long-term. Accordingly, Integrys requests that the Commission deny ANR's proposed tariff change or schedule a technical conference to allow the parties to develop a solution that will benefit all stakeholders.

6. The Commission finds that ANR's filing is consistent with the Commission's policy on the elimination of the five-year term matching cap for the ROFR. The Commission views Integrys' objection to the tariff revision as a general attack on the established Commission policy for removing the term cap limit. In its Order on Remand,[7] affirmed by the D.C. Circuit,[8] the Commission found that a term cap is not necessary to protect existing long-term shippers from the pipeline's exercise of power. The Commission concluded that its existing regulatory controls are sufficient to constrain pipelines from withholding capacity to pressure shippers into longer contracts than they desire, without the need for any term matching cap. Integrys presents no new arguments that would cause us to revise that policy in this order.

7. Therefore, the Commission accepts ANR's proposed tariff revision to be effective February 1, 2008, as proposed.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

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[7] 101 FERC ¶ 61,127 (2002).

[8] *American Gas Association v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).