132 FERC ¶ 61,090
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

ANR Pipeline Company Docket No. RP10-940-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS AND ESTABLISHING A TECHNICAL CONFERENCE

(Issued July 30, 2010)

1. On July 1, 2010, ANR Pipeline Company (ANR) filed revised tariff sheets[1] to remove from its tariff provisions concerning charges for handling and transporting Associated Liquids.[2] ANR requests that the revised tariff sheets become effective August 1, 2010. Indicated Shippers[3] filed a protest. For reasons discussed below, the Commission accepts and suspends the revised tariff sheets in footnote no. 1 to be effective January 1, 2011, or some earlier date if established in a subsequent Commission order, subject to the outcome of the technical conference established by this order.

Subject Filing

2. ANR proposes to delete from Sheet No. 18: (1) a statement that an Associated Liquids Charge applicable to ETS, RTS-1, FTS-2, STS, and ITS service is included in an

[1] Seventy-Second Revised Sheet No. 18, Seventh Revised Sheet No. 108, and Second Revised Sheet No. 146 to FERC Gas Tariff, Second Revised Volume No. 1.

[2] In this context, Associated Liquids are hydrocarbons in an offshore gas stream that liquefy during the production and gathering process, and are injected into an offshore pipeline such as ANR while in a liquefied state as part of the gas stream for subsequent transportation to an onshore delivery point. ANR describes Associated Liquids Charges as liquids handling fees applicable to services provided at its Patterson compressor station, which are in addition to charges for liquids transportation.

[3] The Indicated Shippers include Marathon Oil Company and Shell Offshore Inc.

exhibit to the applicable service agreement; and (2) a charge for liquids transportation. ANR states that Associated Liquids charges are now assessed to producers of liquids transported and/or handled on the ANR system pursuant to separate agreements between such producers and ANR, rather than transportation service agreements. ANR notes that the Commission retains jurisdiction over the transportation of liquefiables, and that it is not proposing any changes to a separate IT liquefiables *pro forma* service agreement in its tariff.

3. ANR also proposes to eliminate language in the General Terms and Conditions (GT&C) section 5.4 (Transportation of Associated Liquids) that provides an alternative resolution to circumstances in which a party with rights to Associated Liquids causes a gas stream with such liquids to be injected into the pipeline but has not signed an Associated Liquids Contract. The section states that ANR may reject such nominations, or may charge the owner of the liquids a rate equal to the maximum ITS rate for each dekatherm equivalent of the transported liquids. ANR proposes to eliminate the alternative remedy of charging the equivalent ITS rate.

4. Finally, ANR proposes to eliminate references to Associated Liquids in GT&C sections 18.1 (Responsibility for Gas), and 18.2 (Warranty). Section 18.1 now vests exclusive control of gas and Associated Liquids, as well as responsibility for damage and or injury caused thereby, with ANR from receipt to delivery, and with the Shipper before injection and after delivery. Section 18.2 contains various Shipper warranties as to the gas and Associated Liquids.

5. ANR asserts that the subject tariff provisions are obsolete, having resulted from a now expired 1983 settlement agreed to by ANR's predecessor, Michigan Wisconsin Pipeline Company.[4] ANR states that handling and transportation of Associated Liquids are no longer performed pursuant to its tariff, and according to precedent, the Commission no longer has jurisdiction over rates for liquids transportation.[5]

Public Notice, Interventions and Protest

6. Public notice of ANR's filing was issued on July 6, 2010. Interventions and protests were due as provided in section 154.210 of the Commission's regulations

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[4] *See Tennessee Gas Pipeline, Co., et al.*, 23 FERC ¶ 61,233 (1983).

[5] Citing *Mobil Oil Corp. v. FPC*, 483 F.2d 1238 (D.C. Cir. 1973). However, the Commission retains jurisdiction over transportation of liquefiables, which are constituents of the offshore gas stream injected into the pipeline in a gaseous state and liquefy after injection. ANR has a separate IT liquefiables *pro forma* service agreement covering this service, to which ANR does not propose tariff changes.

(18 C.F.R. § 154.210 (2010)). On July 22, 2010, Indicated Shippers filed an out-of-time motion to intervene and a protest. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2010)), all timely filed motions to intervene and any motions 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.

7. Indicated Shippers assert that the proposed tariff changes will have significant adverse impacts on ANR's offshore shippers and that ANR's proposal to delete provisions related to Associated Liquids as obsolete is a mischaracterization. Indicated Shippers argue that the issues resolved by the Commission-mandated industry-wide liquids/liquefiables settlements of the early 1980's such as ANR's are not as simple as ANR has portrayed, and the fact that the settlements have expired do not render the subject tariff provisions any less important.

8. They note, for example, that the tariff revision leaves unstated how ANR would distinguish associated liquids from pipeline condensate, and does not clarify ANR's responsibility to provide natural gas transportation service without undue preference to wet or dry gas streams. Specifically, Indicated Shippers state that nothing in ANR's tariff filing (1) indicates whether or how ANR distinguishes Associated Liquids from pipeline condensate, or whether ANR charges for one as natural gas and for the other as a liquid; (2) indicates what difference it makes under the tariff if retrograde condensate vaporizes during transit; (3) examines how natural gas transportation service and rates will be affected by the removal of tariff language acknowledging ANR's responsibility to separately account for its receipt and transportation of Associated Liquids.

9. Indicated Shippers assert the filing should be rejected because ANR has not demonstrated the proposed tariff changes are just and reasonable. They argue that in most instances, there is no alternative for transporting Associated Liquids other than the pipeline transporting the rest of the associated gas stream. Thus, if an offshore pipeline were to suddenly refuse to transport Associated Liquids, transportation of the remaining gas stream would be severely inhibited because the stream could not be produced without a means of transporting the Associated Liquids onshore. Indicated Shippers also dispute ANR's jurisdictional analysis, and assert that even though the Commission does not have jurisdiction over the transportation of liquids, per se, the Commission does have jurisdiction over the transportation of liquids and liquefiables that are in a dual phase pipeline such as ANR, and change from gaseous to liquid phase and vice versa (such as "flash gas" and "retrograde condensate)." Moreover, the Commission has jurisdiction over the allocation of the costs of pipeline transportation of liquids and liquefiable hydrocarbons

10. Indicated Shippers also object to ANR's proposed removal of a provision in GT&C section 5.4 under which ANR may charge the owner of Associated Liquids a rate equal to the maximum ITS rate for each Dth equivalent (assumed to be 5.8 Dth/barrel) of the transported Associated Liquids if such owner has not signed a separate Associated

Liquids Transportation Agreement with ANR. Indicated Shippers state that many shippers with minimal Associated Liquids do not sign Associated Liquids agreements and such tariff provisions ensure that this cost is not subsidized by others. Also, Indicated Shippers are concerned that because section 5.4 also currently permits ANR to reject nominations of gas produced with liquids if the shipper does not have an Associated Liquids transportation agreement, this provision would allow ANR to force the execution of a non-jurisdictional agreement, by threat of termination of jurisdictional service.

11. Indicated Shippers disagree with ANR's assertion that because transportation and handling of Associated Liquids are not performed under the tariff, references to Associated Liquids in GT&C sections 18.1 (Responsibility for Gas) and 18.2 (Warranty) are superfluous and should be deleted. Indicated Shippers believe this assertion misstates the intent of such provisions, which require ANR account for and take responsibility for Associated Liquids so as not to allow the pipeline to misallocate Btus and to miscalculate its Lost and Unaccounted for charges.

12. Finally, Indicated Shippers propose tariff language to clarify definitions in ANR's tariff of Associated Liquids, flash gas, and the term "gas" itself "to ensure that all hydrocarbons received by ANR in a gaseous state or are otherwise gasified during transportation remain subject to ANR's tariff."

Discussion

13. The Commission finds that Indicated Shippers have raised numerous issues that require further examination, and these are best explored at a technical conference. The Commission therefore is accepting and suspending ANR's proposed revised tariff sheets for the full five-month statutory period, to be effective January 1, 2011, or some earlier date as determined in a subsequent order. Having reviewed ANR's filing and the protest of Indicated Shippers, the Commission finds that ANR's proposed tariff revisions may not be just and reasonable. A technical conference will afford the Commission Staff and the parties to the proceeding an opportunity to discuss all of the issues raised by ANR's proposal. ANR should be prepared to address all the concerns raised in the protest, and if necessary, to provide additional technical, engineering and operational support for its proposals. Any party proposing alternatives to ANR's proposals should also be prepared to similarly support its position. Based upon its analysis of the information provided in this proceeding, the Commission Staff may issue data requests prior to the technical conference, or a notice of the technical conference may contain questions that need to be addressed by ANR or other parties at the conference.

Suspension

14. Based on a review of the filing, the Commission finds that the proposed tariff sheets have 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 sheets for filing, and suspend their effectiveness for the period set forth below.

15. 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 suspension for the maximum period may lead to harsh and inequitable results. *See, Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (minimum suspension). Such circumstances do not exist here. Therefore, the Commission will accept and suspend the proposed tariff sheets to be effective January 1, 2011, or some earlier date if established in a subsequent order, subject to the outcome of the technical conference established herein and further order of the Commission.

The Commission orders:

(A) ANR's revised tariff sheets listed in footnote number 1 are accepted and suspended to be effective January 1, 2011, or some earlier date if established in a subsequent order, subject to the outcome of the technical conference established by this order, and further order of the Commission.

(B) The Commission's staff is directed to convene a technical conference to address the issues raised by ANR's filing and report the results of the conference to the Commission within 120 days of the date this order issues.

By the Commission. Commissioner LaFleur is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.