138 FERC ¶ 61,247
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

ANR Pipeline Company Docket No. RP12-471-000

ORDER ACCEPTING TARIFF RECORDS, SUBJECT TO CONDITIONS

(Issued March 30, 2012)

1. On March 2, 2012, ANR Pipeline Company (ANR) filed the tariff records listed in the Appendix to this order to be part of its FERC Gas Tariff, Third Revised Volume No. 1. ANR proposes to revise Tariff Sections 6.3 and 6.22 of its General Terms and Conditions (GT&C), as well as its form of service agreement (FSA) in Tariff Section 7.1 to accommodate contributions in aid of construction (CIAC) for shipper-owned facilities. ANR asks that the Commission accept the tariff records to become effective April 2, 2012.

2. As discussed below, the Commission will accept the tariff records to become effective April 2, 2012, subject to conditions.

Description of the Filing

3. ANR states that its filing provides that it may pay for all or part of the cost of construction of a shipper's facilities if ANR determines that doing so will be economically neutral or beneficial to it. According to ANR, the flexibility to offer CIAC will provide it with greater opportunities to attract new supply sources and deliver gas to new markets, as well as give it enhanced flexibility to maintain and establish long-term relationships with existing and potential customers.

4. ANR explains that it proposes to modify sections 6.3 and 6.22 of its GT&C. Additionally, it states that it is incorporating a reference to the tariff language proposed in the instant filing in the Further Agreements section of its FSA for firm services. By doing so, continues ANR, it seeks to eliminate any potential non-conforming provisions in its agreements with its customers. ANR states that the ability to receive a capital contribution will be available to its customers, subject to the terms included in the

proposed tariff language. ANR asserts that the Commission has approved similar tariff provisions in *Northern Border Pipeline Company* (*Northern Border*)[1] and *Texas Gas Transmission, LLC* (*Texas Gas*).[2]

Notice, Interventions, and Protest

5. Public notice of ANR's filing was issued on March 5, 2012, with interventions and protests due as provided in section 154.210 of the Commission's regulations.[3] Pursuant to Rule 214,[4] all timely-filed motions to intervene and any unopposed motions to intervene out-of-time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties.

6. Integrys Gas Group (Integrys)[5] filed a motion to intervene and comments. Integrys states that it supports pipelines having tariff language allowing them to agree to a CIAC for shipper-owned facilities, but with disclosure requirements to protect the interests of other shippers. Integrys contends that it is essential for a pipeline to provide CIAC for a project only if it will not harm other shippers because shippers ultimately may bear the rate effects of the CIAC. Integrys states that ANR's proposal properly recognizes this condition. Integrys also states that the proposal affords ANR significant discretion and subjectivity in calculating the incremental cost of service and incremental revenues, which are crucial in determining whether a project is beneficial or neutral. In particular, states Integrys, ANR proposes to base revenues on

> transportation rates it expects to be able to charge, net of pass-through surcharges, and the incremental volumes or firm service contracts to be incremental if the volumes or firm service contracts that will be transported or provided

[1] 101 FERC ¶ 61,092 (2002).

[2] 128 FERC ¶ 61,104 (2009).

[3] 18 C.F.R. § 154.210 (2011).

[4] 18 C.F.R. § 385.214 (2011).

[5] The members of Integrys Gas Group for purposes of its intervention and comments are Michigan Gas Utilities Corporation, North Shore Gas Company, The Peoples Gas Light and Coke Company, and Wisconsin Public Service Corporation.

> respectively would not otherwise flow through, or be contracted for firm service on Transporter's system.[6]

7. Integrys states that the subjectivity inherent in the calculation and the potential rate impacts on other shippers on the system require transparency in the CIAC process. If ANR chooses to support a shipper's project through a CIAC, that choice should be public and the analysis that ANR believes supports its choice should be available to other shippers. As with negotiated rate agreements that pipelines must disclose, a CIAC decision and the underlying analysis should be subject to comparable disclosure. Integrys would not oppose appropriate confidentiality protections in making the analysis available to interested shippers. For example, protections applicable to critical energy infrastructure information should apply to the shipper's project and a shipper should be able to protect its confidential data.

8. Atmos Energy Corporation (Atmos) filed a motion to intervene and a protest. Atmos states that it protests the filing because (1) as worded, the proposal is over-broad and provides ANR with too much discretion and (2) ANR has failed to demonstrate that its proposal will not adversely impact existing customers' rates.

9. Atmos points out that the proposal gives ANR broad authority to pay for construction of any facilities built and owned by any shipper, regardless of whether the shipper is or ever will be a customer of ANR. Atmos further states that ANR relies on *Northern Border* and *Texas Gas* in support of its proposal; however, Atmos emphasizes that ANR fails to mention that the tariff provisions permitted in those cases did not allow the pipelines to subsidize projects by shippers who were not current pipeline customers.

10. For example, continues Atmos, the tariff provisions approved in *Northern Border* permitted Northern Border "to build, own and operate or contribute to the cost of lateral lines."[7] Atmos maintains that this language, which pertains only to lateral facilities, and presumably only to customers of Northern Border, is far more limited in scope than ANR's request to reimburse "potential" shippers. Likewise, continues Atmos, the tariff provision approved in *Texas Gas* is limited to projects built for existing Texas Gas customers.[8] Atmos also observes that Texas Gas' proposal permitted it to pay for part or all of the cost of modification or construction of facilities at one or more delivery points

---

[6] *See* Motion to Intervene and Comments of Integrys Gas Group March 14, 2012, at 4.

[7] *Northern Border Pipeline Co*., 101 FERC ¶ 61,092, at P 1 (2002).

[8] *Texas Gas Transmission, LLC*, 128 FERC ¶ 61,104, at P 10 (2009).

if Texas Gas and the customer agreed to extend a service agreement at mutually agreeable rates for a term of at least five years.

11. Atmos anticipates that ANR will contend that the proposed language is designed to allow potential customers to become actual customers, but as written, the proposed tariff provision provides no parameters for the circumstances in which ANR will pay for or contribute to the construction of facilities. For example, contends Atmos, revised section 6.3(2) states that ANR "may agree to pay or contribute to the cost of building facilities" but only when ANR "determines that doing so will result in an economic benefit or when [ANR] determines that the project is economically neutral to [ANR]." Atmos maintains that it is not clear on what basis ANR might conclude that investing in facilities would provide an economic benefit. Further, argues Atmos, ANR has not explained why it should be permitted to invest in facilities owned by third parties that are economically neutral to ANR. In fact, states Atmos, the proposed tariff language does not even limit the facilities to which CIAC would apply to natural gas facilities. Moreover, argues Atmos, neither the filing nor the proposed tariff language specifies what constitutes an "economic benefit," what is considered to be "economically neutral," or why an economically neutral investment is justified.

12. Atmos next argues that ANR's proposal could result in discrimination against existing (and potential) customers because ANR would be permitted to act, at its sole discretion, as a financier of additional facilities for some, but not all customers (or non-customers). Atmos contends that there are no safeguards in ANR's proposed tariff provision that would establish how and why ANR may differentiate between entities eligible for investments by the pipeline. According to Atmos, this unfettered discretion, in combination with the highly vague and unquantifiable "economic benefit" standard, and without the presence of any review mechanisms, creates significant risk that ANR's tariff proposal could be implemented in an unduly discriminatory manner.

13. Atmos maintains that any provision allowing ANR to make investments of the type anticipated by its filing should be transparent so that other potentially interested parties can understand how ANR selects the projects in which it may invest. Further, states Atmos, any such provision must include some process for review or oversight to ensure that ANR does not provide CIAC in an unduly discriminatory manner.

14. Atmos further claims that ANR's filing is devoid of information concerning the recovery of its costs, and Atmos contends that the Commission should require ANR to disclose how and when it intends to recover such funds. Atmos is concerned that ANR will seek to recover some or all of the cost of its investment in the facilities from its customers without showing that the additional facilities actually reduce ANR's cost of service. According to Atmos, the current proposal could require ANR's customers to pay the costs for ANR's investment in facilities that are not used and useful in providing service to its customers. Atmos emphasizes that ANR should not be permitted to place its current customers at risk for costs over which they have no control, which may not

contribute to the provision of service to current customers, and for which such customers may receive no benefit. Atmos concludes that it is one thing for ANR's shareholders to make speculative investments in third-party projects at their own financial risk, but it is quite another to ask ANR's other customers to guarantee such investments in non-jurisdictional assets through charges from ANR.

Commission Analysis

15. As discussed below, the Commission will accept ANR's proposal, subject to conditions.

16. Both Integrys and Atmos express concern about transparency and whether improvements to the facilities of some shippers and funded by ANR will be harmful to the interests of other shippers. In *Texas Gas*,[9] the Commission stated that it considered the pipeline's proposed CIAC to be a special term and condition. The Commission pointed out that section 284.13(b)(1)(viii) of the Commission's regulations[10] requires interstate pipelines to post such information on their websites. Accordingly, the Commission directed Texas Gas to post any CIAC on its public website, along with related terms and conditions. Consistent with its action in *Texas Gas*, the Commission directs ANR to post on its public website any CIAC made to any shippers, along with any related terms and conditions.

17. Atmos also is concerned about any potential adverse rate impact, and it urges the Commission to require ANR to disclose how and when it will recover any CIAC expended for a shipper's facilities. Atmos fears that ANR will seek to recover some or all of the cost of its investment in these facilities from its customers without showing that the additional facilities actually reduced ANR's cost of service. According to Atmos, the proposal as written could allow ANR to require its customers to pay the costs of investments in facilities that are not used and useful in the provision of service to its customers and which may be built and owned by shippers that are not even ANR customers.

18. In service agreements between pipelines and shippers, pipelines provide jurisdictional services on jurisdictional facilities, and shippers pay jurisdictional rates to recover the costs that the pipeline incurs to provide those services. In the instant proposal, ANR would pay for the modification or construction of non-jurisdictional facilities in exchange for a long-term contract to provide jurisdictional service.

---

[9] *Texas Gas Transmission, LLC*, 128 FERC ¶ 61,104 (2009).

[10] 18 C.F.R. § 284.13(b)(1)(viii) (2011).

Section 284.10(c)(4) of the Commission's regulations[11] provides that any maximum rate must be designed to recover solely those costs that are properly allocated to the service to which the rate applies. There is no such presumption for a pipeline to recover the costs of a shipper's facilities that are not to be used by the pipeline to perform its jurisdictional services. Consistent with Commission cost-of-service policy, ANR must functionalize CIAC of non-jurisdictional facilities and related transactions in non-jurisdictional accounts, and this is a condition of the Commission's acceptance of the proposal. In its next rate case, should ANR seek to recover costs that Atmos or any customer believes may have been incurred by ANR while making a CIAC in aid of the construction of a shipper's facilities, Atmos or any customer may challenge ANR to support such costs, and ANR will have the burden to demonstrate that the costs are just and reasonable.

The Commission orders:

The Commission accepts the tariff records listed in the Appendix to this order to become effective April 2, 2012, subject to the conditions discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

[11] 18 C.F.R. § 284.10(c)(4) (2011).

Appendix

ANR Pipeline Company
FERC NGA Gas Tariff
ANR Tariffs

Accept April 2, 2012,
Subject to Conditions:

6.3 - GT&C, Facilities Policy, 1.0.0
6.22.2 - GT&C, Eligibility, 1.0.0
7.1 - Service Agmts, Transporter's Firm Rate Schedules, 2.0.0