UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

ANR Pipeline Company Docket No. RP06-92-000

ORDER ACCEPTING TARIFF SHEETS SUBJECT TO CONDITIONS

(Issued December 15, 2005)

1. On November 1, 2005, ANR Pipeline Company (ANR) filed the tariff sheets listed in the Appendix to this order to implement two new linked transportation services. The two proposed rate schedules consist of: (1) a firm backhaul transportation service with a "minimum flow" requirement under new Rate Schedule FTS-4; and (2) a linked firm forward haul transportation service under new Rate Schedule FTS-4L, to be effective December 16, 2005. As discussed below, the Commission accepts ANR's filing subject to conditions.

I. Background

2. In Docket No. RP04-327-000, the Commission rejected ANR's filing requesting approval for similarly linked services.[1] In that docket, ANR proposed to add two new provisions to the General Terms and Conditions (GT&C) of its Tariff. The first would have allowed ANR and a shipper to agree to a discounted rate for a particular service based on the shipper agreeing to flow up to an agreed-to level of gas at specified points. ANR stated that such an agreement could create incremental capacity that it could then sell on a primary firm basis; *i.e.*, an agreement to maintain certain backhauls could create forward haul capacity. The second provision would have offered a shipper the option of entering into two linked service agreements. Specifically, a shipper could elect this option, if ANR had insufficient capacity under existing operating conditions to perform the shipper's request for new firm service, but could do so if the shipper agreed to maintain specified gas flows under another service agreement. The Commission determined that ANR's proposal to make discounts available under a "must flow" condition and its proposal for linked service agreements created a different quality of service than the firm service then provided under ANR's existing FTS rate schedules. The Order rejected ANR's proposal without prejudice to ANR's right to file an application to provide the service under a new rate schedule.

[1] ANR Pipeline Company, 108 FERC ¶ 61,028 (2004).

3. ANR states that it is now proposing the new rate schedules which the Commission gave it the option to file. ANR currently offers firm transportation service in both a forward haul and backhaul direction under Rate Schedule FTS-1. The backhaul transactions may create additional forward haul capacity on ANR's system. However, ANR states that it has proposed the new service because the existing backhaul service available under ANR's FTS-1 rate schedule does not contain a minimum flow obligation, and for this reason cannot create a reliable forward haul capacity that can be sold on a firm basis.

4. ANR states that linking the proposed firm backhaul service (FTS-4) with the forward haul firm service (FTS-4L) will ensure that incremental forward haul firm capacity will be created that can be sold on a firm basis because the ability of a firm forward haul shipper to nominate and flow gas would be dependent on capacity created by the backhaul shipper. ANR proposes to maintain the link between FTS-4 and FTS-4L services by enforcing a minimum flow obligation for FTS-4 backhaul shippers. ANR will have the right to issue a Must Flow Order (MFO) to the FTS-4 backhaul shipper if the shipper's nominations (or lack of nominations) impede ANR's ability to offer a scheduled firm forward haul service to the FTS-4L shipper. ANR states that failure to comply with an MFO will subject the FTS-4 backhaul shipper to a penalty of $25.00, plus the applicable spot price index, per Dth. In the event the minimum flow condition has not been met, ANR will notify the FTS-4L shipper electronically and ANR and the shipper could agree that a portion of the penalty received from the FTS-4 backhaul shipper will be awarded to the FTS-4L shipper.

5. Under ANR's proposal, the FTS-4 and FTS-4L services will generally be subject to the same rates and operating conditions that apply to existing FTS-1 firm shippers. Both the FTS-4 and FTS-4L services retain the flexible receipt and delivery features in Rate Schedule FTS-1, as well as capacity release, segmentation and secondary point elevation rights. However, due to the linked nature of the services it will be necessary to condition those rights on ANR's ability to continue to provide both services.

6. ANR states that it has revised the Scheduling and Curtailment section of its Tariff to ensure that the rights of existing shippers will be protected. ANR proposes two new sections to be added to the General Terms and Conditions of its tariff, sections 10.1(c) and 10.2(b). The new sections provide that gas nominated by FTS-4L shippers will be reduced on a pro rata basis among all FTS-4L shippers should an FTS-4 backhaul shipper fail to meet minimum flow requirements. The affidavit of ANR's Director of Rates is attached as Exhibit A to ANR's filing. The Affidavit states that ANR's existing Rate Schedule FTS-1 rates are appropriate for both Rate Schedules FTS-4L and FTS-4, and that volumes and revenues associated with those services will be taken into account in the base and test periods of ANR's next rate case.

II. Interventions and Protests

7. Public notice of the filing was issued on November 17, 2005. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214,[2] all timely filed motions to intervene and any motions to intervene before this order's issuance date are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Comments were filed by The Peoples Gas Light and Coke Company, *et al.*, (Peoples), ProLiance Energy, LLC (ProLiance), and BP Energy Company and BP America Productions Company (BP). Protests were filed by the Indicated Shippers, and Virginia Power Energy Marketing, Inc. (VPEM).

8. Peoples support ANR's proposal to make new services available, but its support is conditioned upon ANR's assertion that the new services will not adversely affect the quality of service to existing firm shippers. ProLiance does not oppose ANR's proposal but, like Peoples, expresses concern that the new services be offered at an appropriate rate and administered in a way that does not degrade the quality of firm shippers' services.

9. BP seeks clarification of two issues. First, BP asserts that while ANR states that the new service will meet demands for firm capacity without any degradation of service to existing firm shippers, this assurance is not contained in ANR's proposed tariff revisions. BP requests that Article 10.1(c) of ANR's proposed revised GT&C, which states that FTS-4L nominations will be reduced if ANR does not have sufficient capacity to schedule all FTS-4L nominations, be changed to clarify that the scheduled nominations would be reduced to the level of capacity available. BP recommends that Article 10.1(c) be revised to read: "If . . . Transporter does not have sufficient capacity to schedule nominated quantities received from all FTS-4L shippers, then nominated quantities for the affected FTS-4L shippers shall be reduced accordingly on a pro-rata basis . . . ." The second issue for which BP seeks clarification is section 2(e) of Rate Schedule FTS-4L. This states that the shipper and ANR may agree that the shipper is entitled to a portion of penalty revenue derived from a FTS-4 shipper's failure to meet its MFO obligation. BP states that the proposed tariff fails to explain how the shipper's portion will be calculated or what happens to the excess penalty. BP requests that ANR be required to explain this provision in more detail.

10. Indicated Shippers protest three of ANR's proposed tariff changes. Indicated Shippers assert that FTS-4L shippers should not be required to negotiate with ANR to what extent MFO penalties would be directly credited to FTS-4L shippers. Indicated Shippers conclude that ANR should be required to credit any MFO penalty revenues to the FTS-4L shipper whose nomination was curtailed or reduced as a result of the FTS-4 shipper's failure to comply with its MFO obligations. Alternatively, Indicated Shippers state that if the Commission determines that the FTS-4L shipper is not entitled to be

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[2] 18 C.F.R. ¶ 385.214 (2005).

credited for all of the MFO penalty revenues, then 100 percent of the MFO penalty revenues should be credited to all non-offending firm shippers along with other penalty revenues, pursuant to § 34 of the General Terms and Conditions of ANR's Tariff.

11. Indicated Shippers request that ANR be required to post the availability of "linked" capacity, along with other terms of the FTS-4 service when such capacity becomes available. Indicated Shippers argue that because of the link between the FTS-4 and FTS-4L services, potential FTS-4L shippers should be made fully aware of the MFO obligations of the FTS-4 backhaul shipper. Indicated Shippers assert that to avoid any potential discrimination and to provide full notice to all shippers, ANR should be required to post the availability of FTS-4L capacity and the applicable restrictions on that capacity as set forth in the linked FTS-4 backhaul service agreement.

12. Finally, Indicated Shippers argue that the FTS-4 Service Agreement should be amended to include the applicable terms and conditions for FTS-4 service. Indicated Shippers assert that the FTS-4 Service Agreement should include space and the appropriate blanks for setting forth the terms of the shipper's MFO obligations.

13. VPEM raises a different concern, namely, whether service under Rate Schedule FTS-4L is interruptible, rather than firm, and should have rates designed accordingly. VPEM argues that if the FTS-4 shipper has its service interrupted, terminated or suspended for non-payment, the FTS-4 shipper's nominations would not be scheduled as firm[3] and therefore would be subject to another customer or class of service, a characteristic which VPEM states is clearly interruptible service.

III. <u>Discussion</u>

14. ANR asserts that the two new services proposed here will enable ANR to use its pipeline system more efficiently and will help meet shippers' demands for incremental firm capacity. ANR also asserts that this can be done without degrading the firm service held by existing shippers and without need for construction of new facilities. We find that ANR's proposal to link firm backhaul and firm forward haul service to provide incremental firm capacity to meet shippers' demands is generally consistent with Commission policy. However, the protests have raised issues which merit consideration. Accordingly, we will accept ANR's proposed tariff sheets, to be effective December 16, 2005,subject to conditions discussed below.

15. BP expresses concern that, although ANR asserts that the proposed new services will cause no degradation of service to existing firm shippers, there is no language to that effect in the proposed tariff provisions. However, ANR has added a section to its tariff that provides that nominated quantities from a FTS-4 shipper affected by a FTS-4L

[3] Proposed GT&C section 10.1(c) of ANR's tariff states that the excess of nominated quantities over scheduled quantities shall then be scheduled as Priority Class Three or Four.

shipper's failure to meet minimum flow requirements will be reduced *pro* rata among all affected FTS-4 shippers based on nominations. ANR will schedule any excess of nominated quantities over scheduled quantities as Priority Class Three or Four. We find that these revisions will ensure that ANR's ability to receive or deliver gas under existing firm contracts will not be adversely affected by the new services. Therefore, we find BP's suggested tariff revision unnecessary.

16. Both BP and Indicated Shippers raise issues about ANR's treatment of penalty revenues that could occur from the failure of a FTS-4 shipper to meet its MFO obligations. ANR's proposed tariff language indicates that the disposition of penalty revenues will remain within ANR's control although FTS-4L shippers "may" negotiate with ANR in order to receive some portion of the revenues. We agree with Indicated Shippers that ANR's proposed treatment of penalty revenues is too vague and that an FTS-4L shipper should not be required to negotiate with ANR whether and to what extent penalty revenues may be credited to FTS-4L shippers. To the extent ANR's proposal would permit it to retain any portion of these penalty revenues, it is inconsistent with section 284.12 (b)(2)(v) of the Commission's regulations,[4] providing that pipelines must credit all penalty revenue to shippers in a manner to be prescribed in the pipeline's tariff. We therefore reject ANR's proposal that it may unilaterally control how any revenue from penalties may be shared. In the circumstances of these linked services, we find it reasonable to require ANR to file revised tariff language which specifies that ANR will credit any MFO penalty revenues to the linked FTS-4L shipper or shippers whose nomination was reduced as a result of a FTS-4 shipper's failure to comply with the MFO obligations. This will compensate the FTS-4L shippers for their loss of capacity due to the failure of the FTS-4 backhaul shipper to comply with the conditions of its service.

17. Indicated Shippers object to ANR's failure to post all of the relevant terms of the linked FTS-4 service on its website and urge the Commission to require full disclosure. Even though ANR now posts unsubscribed capacity on its website, it does not describe the detail necessary for a potential shipper to determine whether this capacity is available FTS-4L capacity resulting from an FTS-4 agreement. Additional information is necessary for shippers to properly evaluate the value and limitations of the FTS-4L capacity. Due to the linked nature of the FTS-4L service, shippers must be aware of the MFO obligations and other restrictions in the FTS-4 Service Agreement. Therefore, we will require ANR to revise its tariff to provide that it will post on its website the availability and relevant terms of FTS-4L capacity.

18. ANR has proposed to revise its existing transportation Form of Service Agreement to include FTS-4 and FTS-4L service. However, ANR has not revised the service agreement to include other terms and information that will apply under these rate schedules. Because transportation under the FTS-4 and FTS-4L agreements is subject to additional terms, ANR must allow for inclusion of these terms in its service agreements. Thus, we will require ANR to amend the FTS-4 Form of Service Agreement to provide

[4] 18 C.F. R. § 284.12(b)(2)(v) (2005).

blank spaces for setting forth each of the relevant terms of an FTS-4 and FTS-4L service agreement. These terms include, but are not necessarily limited to the following: (1) the time of notice that ANR will provide the FTS-4 shipper prior to the time the shipper must flow the specified amount of gas; (2) the minimum and maximum amount of gas covered by the must-flow obligations; (3) the receipt and delivery points between which the must-flow gas will flow; and (4) any other MFO obligations.

19. However, we do not agree with VPEM that ANR's proposed new firm service is interruptible. While the proposed rate schedules are "linked," and require the FTS-4 backhaul shipper to adhere to the obligations in its contract in order that the FTS-4L shipper may flow gas, as long as the FTS-4 shipper adheres to its obligations, FTS-4L service is on par with ANR's other firm transportation services. For example, FTS-4L service will be subject to the same operating conditions that are applicable to ANR's other firm shippers. FTS-4L service also retains the flexible receipt and delivery point features of existing FTS-1 service, as well as capacity release, segmentation, and secondary point elevation rights (subject to the "linked" nature of the new service), but that linkage does not make the service interruptible. FTS-4L service can be curtailed only if the FTS-4 shipper fails to perform according to the terms of its contract. In this case, and under our holding in this order, the FTS-4L shipper would be compensated through receipt of the penalty revenues assessed against the non-performing FTS-4 shipper(s). Thus, while FTS-4L service may be contingent upon the performance of FTS-4 service, the transportation service is not interruptible.

<u>The Commission orders:</u>

(A) The proposed tariff sheets listed in the Appendix of this order are accepted to be effective December 16, 2005, subject to ANR's compliance with the revisions set forth in the body of this order.

(B) ANR must file the revised tariff sheets to reflect the changes required by this order within 15 days of the order's issuance.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX

ANR Pipeline Company
FERC Gas Tariff, Second Revised Volume No. 1

Eighth Revised Sheet No. 1
Twelfth Revised Sheet No. 7
Eighth Revised Sheet No. 12
Forty-Third Revised Sheet No. 17
Thirteenth Revised Sheet No. 17A
Original Sheet Nos. 42H – K
Sixth Revised Sheet No. 46
Ninth Revised Sheet No. 69
Eleventh Revised Sheet No. 70
Ninth Revised Sheet No. 71
Eighth Revised Sheet No. 72
Fourth Revised Sheet No. 74A
Seventh Revised Sheet No. 77
Second Revised Sheet No. 78
Third Revised Sheet No. 94
Fourth Revised Sheet no. 94A
First Revised Sheet No. 99A
Fifth Revised Sheet No. 116
Second Revised Sheet no. 118
Sixth Revised Sheet No. 119
Fifteenth Revised Sheet no. 120
Second Revised Sheet No. 120A
Seventh Revised Sheet No. 122
Fourth Revised Sheet No. 137.01
Sixth Revised Sheet No. 150
Tenth Revised Sheet No. 153
Sixth Revised Sheet No. 153A
Seventh Revised Sheet No. 162
Sixth Revised Sheet No. 162.01
Second Revised Sheet No. 162C
Eleventh Revised Sheet No. 191
Third Revised Sheet no. 191B
Second Revised Sheet No. 192