126 FERC ¶ 61,203
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 5, 2009

In Reply Refer To:
ANR Pipeline Company
Docket No. RP09-222-000

ANR Pipeline Company
717 Texas Street
Houston, TX 77002

Attention: Dean Ferguson, Vice President
Marketing and Business Development

Reference: Order Nos. 712 and 712-A Compliance Filing

Dear Mr. Ferguson:

1. On January 16, 2009, ANR Pipeline Company (ANR) filed revised tariff sheets[1] proposing modifications to its tariff to comply with the capacity release requirements promulgated by Order Nos. 712 and 712-A.[2] The revised tariff sheets are accepted to become effective February 16, 2009, subject to further modifications as discussed below.

2. ANR proposes several changes to its General Terms and Conditions (GT&C) to provide that capacity releases of one-year or less are not subject to the maximum rate cap and to clarify and revise the bidding requirements for capacity release transactions associated with an asset management arrangement (AMA) or a state-approved retail open access program.

3. Notice of ANR's filing was issued on January 23, 2009. Interventions and protests were due January 28, 2009, 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

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[1] *See* Appendix.

[2] *Promotion of a More Efficient Capacity Release Market*, Order No. 712, 73 Fed. Reg. 37,058 (June 30, 2008), FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh'g*, Order No. 712-A, 73 Fed. Reg. 72,692 (December 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008).

[3] 18 C.F.R. § 154.210 (2008).

[4] 18 C.F.R. § 385.214 (2008).

motions to intervene out-of-time before the issuance date of this order are granted. Motions to intervene and comments were filed individually by the East Ohio Gas Company (East Ohio) and Atmos Energy Corporation (Atmos).

4. For the reasons discussed below, the Commission finds that ANR's proposed tariff revisions are generally consistent with the Commission's capacity release policies and Order Nos. 712 and 712-A. Accordingly, the Commission accepts ANR's filing, subject to conditions.

5. ANR proposes in section 21.1(i)(1) of its tariff to exempt from posting and bidding requirements, "A capacity release transaction greater than 365 days at maximum rates."

6. East Ohio asserts that the language in ANR's proposed section 21.1(i)(1) should be changed to refer to releases of "more than one year" rather than to releases of "greater than 365 days." East Ohio asserts that this change provides clarity, avoids leap-year counting issues, and is consistent with Commission regulations.

7. Section 284.8(h)(1)(iii) of the Commission's regulations, as revised by Order No. 712-A, exempts from posting and bidding requirements "A release for more than one year at the maximum tariff rate." ANR's current proposal to exempt releases of "greater than 365 days" is inconsistent with this language. Therefore, the Commission orders ANR to revise section 21.1(i)(1) to exempt from posting and bidding requirements releases of "more than one year." The Commission orders ANR to file a revised tariff sheet consistent with this change within 30 days of the date of this order.

8. Atmos asks the Commission to require ANR to include provisions allowing the "flow-through" of discounts from releasing shippers to their asset managers. For example, Atmos states that it is unclear whether and to what extent ANR will permit a releasing shipper's asset manager to pay the same discounted usage and fuel rates that the pipeline provided to the releasing shipper. Atmos suggests that ANR should clarify (or propose) a policy allowing the asset manager/replacement shipper to receive the same discounted usage and fuel rates applicable to the releasing shipper, particularly since a general refusal to allow "pass-through" of such discounts would impede asset management transactions, contrary to Order Nos. 712 and 712-A.

9. East Ohio urges the Commission to condition acceptance of ANR's proposed tariff sheets on the outcome of the Commission's ruling in *Texas Eastern Transmission, LP*,[5] addressing whether to allow releasing shippers to pass through discounted or negotiated usage or fuel charges to asset managers under asset management arrangements and to marketers under state-regulated retail access programs.

[5] *Texas Eastern Transmission, LP*, 125 FERC ¶ 61,396 (2008) (*Texas Eastern*).

10. The issue of whether a pipeline must provide an asset manager/replacement shipper the same discounted or negotiated usage and fuel rates as it has given the releasing shipper only arises to the extent that the pipeline has provided such discounts or negotiated rates to the releasing shipper. The Commission does not permit pipelines to offer discounts below their minimum rates, which are based on the variable costs allocated to the service to which the rate applies.[6] Therefore, a pipeline such as ANR using a Straight-Fixed Variable (SFV) rate design cannot discount its usage charges, because those usage charges only contain variable costs. The Commission has also held that pipelines may not discount their fuel retention rates, because fuel and lost and unaccounted for (LAUF) gas are variable costs.[7] Thus, the issue of the "flow-through" of discounted usage and fuel charges to an asset manager/replacement shipper does not arise on ANR's system. However, pipelines with negotiated rate authority may enter into negotiated rate agreements which are not bounded by their tariff maximum and minimum rates. ANR has negotiated rate authority, and thus does have authority to enter into negotiated rate agreements providing for fuel retention rates (and usage charges) that vary from those in its tariff.

11. The Commission has held that the usage charge to be paid by the replacement shipper is a matter between the replacement shipper and the pipeline, and the releasing shipper cannot bind the pipeline to accept any particular usage charge from the replacement shipper. Therefore, the pipeline "generally should not be required to give the replacement shipper the same discount" of the usage charge that it gave the releasing shipper.[8] In *El Paso*, the Commission explained that:

> the discount in the usage charge negotiated between the releasing shipper and El Paso is related only to the contract between the releasing shipper and the pipeline and to the transportation services actually performed by El Paso for the releasing shipper under that contract and is not relevant to other contracts and services to other shippers, including replacement shippers.[9]

12. While pipelines are not subject to a blanket requirement that they must give replacement shippers the same usage charge discounts (or negotiated usage and fuel rates) given to the releasing shipper, pipelines are subject to the Commission's general policy that selective discounts must be given on a not unduly discriminatory basis to

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[6] 18 C.F.R. § 284.10(c)(4)(ii) and (5)(ii)(A) (2008).

[7] *Mississippi River Transmission Corp.*, 98 FERC ¶ 61,119 (2002).

[8] *El Paso Natural Gas Co*., 61 FERC ¶ 61,333, at 62,309 (1992) (*El Paso*).

[9] *Id.*

similarly situated shippers.[10] These same policies apply to negotiated usage and fuel charges.

13. Order No. 712 did not modify the Commission's existing policy concerning the pipeline's offering usage charge discounts to replacement shippers.[11] Nor did Order No. 712 address any issue concerning the offering of negotiated usage and fuel charges to replacement shippers. However, Order No. 712's modification of the Commission's regulations to facilitate AMAs does raise the following issues in this proceeding:

(1) whether it would be unduly discriminatory for ANR to deny an asset manager/replacement shipper the same negotiated usage and fuel and LAUF charge that was provided to the releasing shipper, at least during periods when the asset manager is using the released capacity to satisfy the delivery or purchase obligation contained in the release to the asset manager; [12]

(2) if a negotiated rate agreement between ANR and the releasing shipper provides that the discount or negotiated rate is only applicable at certain specified receipt or delivery points as permitted by Commission policy,[13] should the asset manager/replacement shipper's use of those points be considered to be within the usage contemplated by ANR when it granted the negotiated rate to the releasing shipper? For this reason, should ANR be required to offer the same negotiated rate to the asset manager/replacement shipper at those points, but not at any other point;

(3) whether ANR should be required to include in its tariff a provision concerning the circumstances under which it would provide similar negotiated usage and fuel charges to an asset manager/replacement shipper; or

(4) whether the circumstances of individual releases to asset managers are sufficiently case-specific that pipelines should be allowed to decide whether to grant negotiated usage and fuel and LAUF charges to the asset manager/replacement shipper on a case-by-case basis, subject to a general requirement of no undue discrimination.

14. Before deciding these issues, the Commission requires additional information from ANR, and will give the parties an opportunity to provide supplemental comments.

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[10] *See Williston Basin Interstate Pipeline Co.*, 85 FERC ¶ 61, 247, at 62,028-30 (1998), and cases cited, for a discussion of this policy.

[11] *Texas Eastern*, 125 FERC ¶ 61,396, at P 21 (2008).

[12] *See* § 284.8(h)(3) of the Commission's regulations, as revised by Order No. 712-A (defining a release to an asset manager).

[13] *Williston Basin Interstate Pipeline Co.*, 110 FERC ¶ 61,210, at P 5 and 22, *reh'g denied*, 112 FERC ¶ 61,038, at P 19 (2005).

In this regard, the Commission directs ANR to file the following information in a compliance filing within 30 days of the date of this order: (1) how many of ANR's existing firm shipper contracts include negotiated usage and fuel rates, (2) how many of any such contracts limit the negotiated rate to specific points, (3) a general description of how ANR intends to determine whether to grant negotiated usage and fuel charges to asset manager/replacement shippers, and (4) what factors it will consider in determining whether to grant such negotiated rates. Parties may file additional comments within 20 days of the date of ANR's compliance filing.

15. The Commission accepts the tariff sheets listed in the Appendix to this order to be effective on February 16, 2009, subject to conditions and modifications identified in this letter.

By direction of the Commission. Commissioner Kelliher is not participating.

Kimberly D. Bose,
Secretary.

cc: All Parties

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Appendix

ANR Pipeline Company
FERC Gas Tariff, First Revised Volume No. 1
Tariff Sheets Accepted, Effective February 16, 2009, Subject to Conditions

First Revised Sheet No. 156B
Eighth Revised Sheet No. 158
Ninth Revised Sheet No. 159
First Revised Sheet No. 159A
Seventh Revised Sheet No. 160A
Sixth Revised Sheet No. 189