

143 FERC ¶ 61,073
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ANR Pipeline Company

Docket No. RP13-743-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORD SUBJECT TO
REFUND AND CONDITIONS

(Issued April 29, 2013)

1. On March 28, 2013, ANR Pipeline Company (ANR) filed a tariff record¹ and supporting workpapers pursuant to the Deferred Transportation Cost Adjustment (DTCA) provisions set forth in Section 6.26 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff. For the reasons discussed below, the Commission accepts and suspends the tariff record listed in footnote no. 1, to be effective May 1, 2013, subject to ANR filing a revised tariff record to remove the costs associated with the new FT 17593 transportation agreement, which does not qualify for recovery pursuant to Section 6.26.

I. Description of ANR's Filing

2. By way of background, ANR established a list of contracts in Schedule I-4 during its November 1, 1993 rate case in which it listed the transportation service agreements under which ANR incurs costs for the transmission and compression of gas by others; additionally ANR included several "no fee" exchange agreements. The settlement provided that the contracts listed in Schedule I-4 are the only Qualifying Transportation Costs ANR may expressly track under FERC Account No. 858 and the settlement provided that only costs arising from these contracts or from contract amendments and replacements of said contracts may be included in the DTCA. As discussed below, at issue here is whether the costs from a new Part 284 firm transportation service with Great Lakes Gas Transmission Limited Partnership (Great Lakes) (Contract FT 17593) qualifies for inclusion in the DTCA as a qualifying contract amendment or replacement.

¹ ANR Pipeline Company, FERC NGA Gas Tariff, 4.17 - Statement of Rates, Deferred Transportation Cost Adjustment, 3.0.0.

3. ANR is required to adjust its base transportation and storage rates through its DTCA mechanism, if the Qualifying Transportation Costs incurred in a 12-month period, ending April 30th each year, vary by more than ten percent from the established base level.² ANR states that the actual Qualifying Transportation Costs incurred during the 12-month period ending April 30, 2013, varied by more than ten percent from the Qualifying Transportation Costs established in the base level, so that it is entitled to make this DTCA filing.

4. ANR states it is a party to an exchange agreement between ANR, Great Lakes, and TransCanada Pipelines Limited (TransCanada), entered into in 1970. The exchange agreement is implemented by Great Lakes under its Rate Schedule X-1 (X-1 Agreement). The X-1 Agreement requires Great Lakes to deliver 506,500 Dth/day of TransCanada gas to ANR at Fortune Lake, Michigan and ANR re-delivers the equivalent gas volume to Great Lakes at Farwell, Michigan. ANR states that on November 1, 2012, TransCanada reduced its contracted demand on Great Lakes from 698,727 Dth/day to 100,000 Dth/day. ANR states that in order to fulfill its firm contract obligations in Wisconsin it was necessary to enter into a new Part 284 firm transportation service with Great Lakes (FT 17593) for 506,500 Dth/day.

5. ANR argues that the FT 17593 transportation agreement is a “contract replacement” for services provided for under the original X-1 Agreement, which implemented the no-cost exchange between ANR and Great Lakes. For the period beginning November 1, 2012 and ending April 30, 2013, ANR states it will owe Great Lakes approximately \$19.3 million in reservation charges and an additional \$447,349 in usage charges under the new FT 17593 transportation contract. ANR proposes to include these costs within their Qualifying Transportation Costs for the period beginning May 1, 2012 and ending April 30, 2013, for purposes of computing the subject DTCA. The inclusion of the costs associated with the new Part 284 agreement causes the Qualifying Transportation Costs to vary by more than ten percent from the base Qualifying Transportation Costs. Due to the execution of this new contract, ANR calculates a net Deferred Transportation Cost of \$11.325 million for May 1, 2012 through April 30, 2013, as compared to the previous 12-month credit of \$7.75 million. Thus, ANR proposes to implement a DTCA surcharge beginning May 1, 2013 through April 30, 2014 that proposes to recover the approximately \$20 million attributable to the FT 17593 agreement with Great Lakes.

² *ANR Pipeline Co.*, 82 FERC ¶ 61,145 (1998) (established a base level for Account No. 858 trackable costs of \$40,732,091).

II. Interventions, Protests and Comments

6. Public notice of the filing was issued on March 29, 2013. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2012)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)), all timely filed motions to intervene and any unopposed 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. Integrys Gas Group (IGG),³ Wisconsin Distributor Group (WDG)⁴ and Northern States Power Company – Minnesota and Northern States Power Company – Wisconsin (NSP) filed timely protests and comments.⁵

III. Discussion

A. Protests and Comment

7. IGG filed adverse comments suggesting the \$19 million plus increase in Qualifying Transportation Costs warrants scrutiny from the Commission. IGG argues the new contract between ANR and Great Lakes (FT 17593) should not be classified as a “replacement contract” under the Qualifying Transportation Cost definition in Section 6.26 of ANR's GT&C. IGG states, “it does not appear that the Great Lakes contract is replacing a contract but is a new contract...ANR's choice of the term replacement contract is a calculated one to fit the definition of Qualifying Transportation Costs.” IGG contends further inquiry is necessary to determine whether the new contract between ANR and Great Lakes was entered into with operational and business considerations in mind considering all parties involved in the three-party exchange agreement (X-1 Agreement) are affiliates. IGG states that the new contract was entered into at maximum rates and respectfully urges the Commission to seek more information from ANR to support their reasoning behind the inclusion of the new contracts costs within the DTCA.

³ Integrys Gas Group consists of Michigan Gas Utilities Corp., North Shore Gas Co., and The Peoples Gas & Light and Coke Co.

⁴ Wisconsin Distributor Group consists of City Gas Co., Madison Gas & Electric Co., Wisconsin Electric Power Co. and Wisconsin Gas LLC, Wisconsin Power & Light Co. and Wisconsin Public Service Corp.

⁵ On April 19, 2013, ANR filed an answer to the protests. The Commission will not address the arguments raised in its answer, except to note that in this order, we have not foreclosed ANR's ability to pursue recovery of the new FT 17593 contract costs through a general NGA section 4 rate proceeding.

8. WDG filed a protest requesting the Commission to direct ANR to remove the costs associated with its new firm transportation agreement (FT 17593) or alternatively requesting the Commission to establish a technical conference and suspend the rate increase. WDG believes the costs associated with the FT 17593 agreement are not eligible to be recovered through ANR's DTCA provision because they argue the agreement is not listed in Schedule I-4, and cannot be considered an amendment or replacement contract. WDG contends that FT 17593 is not a contract amendment because it is a new contract, and that FT 17593 is not a contract replacement because the original X-1 Agreement is still in place. Moreover, WDG notes that ANR's original X-1 Agreement was entered into as a zero cost exchange agreement which does not incur monthly charges for the transmission and compression of gas under the X-1 Agreement. At best, WDG states that FT 17593 can be characterized as an additional agreement or a supplement to the X-1 Agreement. WDG questions whether the new FT 17593 agreement satisfies the definition of Qualifying Transportation Costs within the DTCA provision of ANR's tariff and requests that ANR be directed to remove the costs associated with FT 17593 from its DTCA filing, without prejudice to ANR's ability to seek to recover its FT 17593 costs in a general rate case filing under NGA section 4.

9. Alternatively, WDG seeks a technical conference as ANR bears the burden of proof under section 4 of the NGA to show the justness and reasonableness of the proposed DTCA rate increase. In addition, WDG states ANR has the burden to demonstrate the prudence of the costs incurred by FT 17593. WDG states that ANR did not provide sufficient support detailing both the circumstances surrounding TransCanada's decreased contract demand or why ANR was "required" to enter into FT 17593. WDG states that "ANR has failed to describe any alternatives to FT 17593 that may have been considered" or why alternative options were not pursued. WDG also seeks explanation as to "why it [ANR] agreed to pay the maximum rate for service on an underutilized Great Lakes pipeline." WDG also seeks explanation as to why prior Commission approval was not obtained for the modification or abandonment of the X-1 Agreement as entered into under NGA section 7(c). Finally, WDG states that the dealings between ANR, Great Lakes, and TransCanada, as affiliates, in connection with TransCanada's contract demand reduction on Great Lakes and ANR's decision to enter into the FT 17593 transportation contract on Great Lakes, requires further scrutiny. At a minimum, if the filing is not rejected, WDG seeks a maximum statutory five-month suspension of ANR's proposed rate increase subject to refund with interest and the outcome of the technical conference.

10. NSP filed a protest requesting the Commission reject ANR's application arguing that the new Great Lakes contract does not meet the criteria for cost recovery under the DTCA provision. NSP believes ANR should not be permitted to use the limited section 4 rate adjustment procedures of the DTCA tracker to recover the costs of the new contract with Great Lakes. NSP asserts that "the DTCA was carefully limited so that it could not be a vehicle for ANR to recover costs under just any new upstream contract." NSP notes

that the DTCA identified the specific agreements that would be eligible for cost recovery thereunder and that ANR's ability to flow new contract costs through the DTCA was confined to costs resulting from "contract amendments and contract replacements" to the originally identified contracts. NSP asserts that FT 17593 cannot be characterized as a contract amendment or replacement given that the X-1 Agreement remains in force today and ANR states it intends to maintain usage of the X-1 Agreement. NSP further states that but for the DTCA, there is no tariff authority for ANR to adjust its rates to account for these new Great Lakes costs outside the context of a general NGA section 4 rate proceeding.

11. Alternatively, NSP states that if the Commission does not reject ANR's attempt to recover the new Great Lakes Contract costs through the DTCA, the Commission should suspend the application for the maximum statutory period, impose a refund condition, and establish a paper hearing to examine whether those costs are recoverable under the DTCA and were reasonable and prudent. NSP contends it has serious questions surrounding the prudence and circumstances of ANR's decision to enter into a maximum rate contract with its affiliate, Great Lakes, allegedly as a result of the actions of another affiliate. NSP protests that ANR has effectively swapped a cost-free rate schedule X-1 exchange for a firm transportation contract that will cost its shippers \$19.7 million this year and double that amount next year and every year thereafter that the contract remains in effect.

B. Commission Decision

12. The Commission finds the new Great Lakes contract does not qualify for cost recovery under the DTCA. Accordingly, for the reasons discussed below, the Commission will accept and suspend the tariff record listed in footnote no. 1, to be effective May 1, 2013, subject to ANR filing a revised tariff record and supporting documentation, within 15 days of the date this order issues, to remove the costs associated with the new FT 17593 transportation agreement, which does not qualify for recovery pursuant to Section 6.26.

13. Section 6.26 of ANR's GT&C defines "Qualifying Transportation Costs" as follows:

Qualifying Transportation Costs. As used in this Section 6.26, the term Qualifying Transportation Costs shall mean the fixed monthly charges and commodity costs which Transporter incurs for the transmission and compression of gas by others recorded in FERC Account No. 858, for service set forth on Schedule I-4 of the rate case filed by Transporter on November 1, 1993, as adjusted by compliance filing dated April 7, 1994. Qualifying Transportation Costs shall include the cost of any contract amendments and contract replacements. Qualifying Transportation Costs shall exclude: (a) Viking Transportation Costs and (b) the

amortization of any Reverse Auction costs included on the Schedule I-4 referenced above and (c) any costs or credits for periods prior to the effectiveness of the rates set forth in Transporter's general rate case filing of November 1, 1993. This section shall not be construed to affect Transporter's right to recover transition costs as Transporter may incur in connection with its contracts with other pipelines providing transmission and compression services or otherwise, such rights being expressly reserved, subject to applicable Commission orders and regulations.

As referenced in Section 6.26 of ANR's GT&C, Schedule I-4 to ANR's April 7, 1994 compliance filing in Docket No. RP94-43 details an exclusive list of contracts pursuant to which ANR was incurring Account No. 858 costs. ANR's X-1 Agreement, listed on Schedule I-4, page 4 of 4, shows that the X-1 Agreement is a no-fee service as it lists the "Adjusted Expense" of "0." Thus, the DTCA was narrowly crafted so that ANR could not recover costs under just any new contract. The DTCA identified specific agreements that would be eligible for cost recovery. In addition, the DTCA limited ANR's ability to flow new contract costs through the DTCA to costs resulting from "contract amendments and contract replacements" for those identified Schedule I-4 contracts.

14. We agree with WDG and NSP that the new FT 17593 contract cannot validly be characterized as either a contract amendment or a contract replacement for Rate Schedule X-1. As an initial matter, ANR does not claim that FT 17593 is a contract amendment, but rather a replacement contract. However, by ANR's own admission, its existing X-1 Agreement continues in force today, and ANR states it will continue to use the existing X-1 Agreement, therefore the FT 17593 agreement is not a replacement contract.⁶ Moreover, even if the X-1 agreement were terminated, we are not persuaded that FT 17593 is a contract replacement for purposes of its DTCA. The characteristics of FT 17593 bear no resemblance to those of the X-1 Agreement. While the longstanding X-1 exchange agreement is included on Schedule I-4 at "zero cost," the new Great Lakes

⁶ ANR Application at 3, n.6. Specifically, ANR states that "the X-1 Agreement is a no-fee service, and TransCanada can continue to flow some volume of gas on the Great Lakes system, ANR continues to utilize the X-1 Agreement up to TransCanada's contract demand of 100,000 Dth per day to the extent such gas flows and is available to be exchanged, and receives the remainder of its needs under the Part 284 contract. To the extent ANR receives gas under the X-1 Agreement, it saves ANR usage charges that would otherwise apply under the Part 284 agreement. Thus, while ANR can no longer rely on the X-1 Agreement to meet its firm obligations, ANR continues to use the X-1 Agreement to take advantage of these cost savings."

contract does not appear on Schedule I-4 and involves substantial new costs of approximately \$20 million for a partial year of cost recovery. Moreover, the X-1 Agreement is an “exchange” while the new Great Lakes contract is a firm transportation agreement, not an exchange agreement.

15. As noted by WDG and NSP, the Commission has previously confirmed the narrow scope of ANR’s DTCA provision. Specifically, in *ANR Pipeline Co.*,⁷ the Commission stated that it was “permit[ting] ANR to implement its Account No. 858 tracker only for upstream capacity it was permitted to retain after its Order No. 636 restructuring.” The Commission also noted:

As we stated in *Columbia Gas Transmission Corp.*: we permitted pipelines to use Account No. 858 trackers after restructuring. [Columbia’s] mechanism should benefit customers by allowing Columbia to track its account No. 858 costs downward as it sheds unneeded upstream pipeline capacity. The alternative is to build into its base rates a level of costs that may no longer be representative.⁸

The Commission went on to state:

In granting rehearing, we emphasize that our decision does not relieve ANR of the burden of demonstrating any costs it seeks to flow through to its customers in this manner ... are reasonable and were prudently incurred. Nor does our decision here allow ANR to enter into additional agreements not already reflected in this section 4 filing that would cause ANR to incur Account No. 858 costs.⁹

16. In addition, the Commission previously rejected language that would have enabled ANR to include the costs of future contracts not already included in Schedule I-4.¹⁰ In that case when ANR made its compliance filing to implement its Account No. 858 tracker, the Commission rejected portions of the proposed tracker, including language which would have given ANR rights to recover costs attributable to any future contracts

⁷ 69 FERC ¶ 61,322 at 62,226 (1994) (*ANR*).

⁸ *Id.* (citing *Columbia Gas Transmission Corp.*, 64 FERC ¶ 61,365, at 63,532-33(1993)).

⁹ *ANR*, 69 FERC ¶ 61,322 at 62,226.

¹⁰ *ANR Pipeline Co.*, 70 FERC ¶ 61,143 (1995).

that ANR might execute.¹¹ Specifically, the Commission rejected language that would have permitted ANR to recover costs of “any other future contracts not included on Schedule I-4, that the Commission authorizes Transporter to enter into and retain.”¹² Thus, because the new Great Lakes contract does not appear on Schedule I-4 and because the new FT 17593 contract is not a contract amendment or a contract replacement of the X-1 Agreement or any of the other contracts listed on Schedule I-4, we find that the new FT 17593 contract does not qualify for cost recovery under the DTCA.

17. Consistent with this discussion, ANR is directed to file a revised tariff record and supporting documentation, within 15 days of the date this order issues, to remove the costs associated with the new FT 17593 transportation agreement, which does not qualify for recovery pursuant to Section 6.26.

18. ANR may, of course, pursue recovery of the new FT 17593 contract costs through a general NGA section 4 rate proceeding, in which all changes in ANR’s costs since its last 1994 rate case would be subject to review. The Commission’s action here is without prejudice to ANR’s right to file a general NGA section 4 rate proceeding to seek recovery of the FT 17593 contract costs, with the burden on ANR to demonstrate the proposed costs were prudently incurred and are just and reasonable.

C. Suspension

19. Based on a review of the filing, the Commission finds the proposed tariff record has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept and suspend the tariff record listed in footnote no. 1, for the period set forth below, subject to the conditions set forth in this order.

20. The Commission’s policy regarding suspensions is that tariff 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 inconsistent with other statutory standards.¹³ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum

¹¹ *ANR Pipeline Co.*, 70 FERC ¶ 61,143.

¹² ANR’s Compliance Filing dated March 10, 1995, in Docket No. RP94-43.

¹³ *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

period may lead to harsh and inequitable results.¹⁴ Such circumstances exist here where ANR is filing pursuant to a Commission-approved tracking mechanism.¹⁵ Accordingly, the Commission will suspend ANR's rates to take effect on May 1, 2013, subject to refund and subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

The Commission orders:

(A) The tariff record listed in footnote no. 1 is accepted and suspended, to be effective May 1, 2013, subject to refund and subject to the conditions set forth in the discussion above and below.

(B) ANR shall file a revised tariff record and supporting documentation, within 15 days of the date this order issues, to remove the costs associated with the new FT 17593 transportation agreement, which does not qualify for recovery pursuant to Section 6.26.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one day suspension).

¹⁵ *ANR Pipeline Co.*, 79 FERC ¶ 61,105 (1997).