

146 FERC 61,087
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ANR Pipeline Company

Docket No. RP13-962-001

ORDER ON REHEARING

(Issued February 11, 2014)

1. On July 26, 2013, ANR Pipeline Company (ANR) requested rehearing of the Letter Order issued in the above-captioned docket on June 27, 2013.¹ As discussed below, the Commission denies in part and grants in part ANR's request for rehearing.

I. Background

2. ANR provides a firm small customer transportation and storage service pursuant to its Rate Schedule STS.² The STS rate is a one-part volumetric rate. That rate is designed to be equivalent to the overall rate a larger shipper subject to ANR's two-part FTS firm transportation rate would pay assuming its load factor usage was significantly below 100 percent. Section 5.2.1 of Rate Schedule STS provides that, in order to be eligible for STS service, a shipper's contract demand may not exceed 6,138 Dth per day, except that shippers otherwise qualifying for STS service are entitled to aggregate their contract demand up to 10,000 Dth per day. In addition, sections 5.2.1 (e) and (f) provide that STS shippers may not use interruptible transportation service or capacity release unless they have exceeded their STS contract demand.

¹ *ANR Pipeline Co.*, 143 FERC ¶ 61,288 (2013) (June 27 Letter Order).

² On July 30, 1993, the Commission issued an order approving ANR's tariff sheets as complying with Order No. 636, which included a small customer STS Rate Schedule. *ANR Pipeline Co.*, 64 FERC ¶ 61,140 (1993).

3. On May 31, 2013, ANR filed tariff records³ to add several additional limits on the availability of STS transportation and storage service. ANR stated that the revisions are necessary because certain STS shippers are using non-STS related transportation and storage services prior to using their entire daily STS entitlements. ANR proposed that the revised tariff sheets be effective July 1, 2013.

4. In support of its filing, ANR explained that Order No. 636,⁴ in an effort to protect small shippers, required pipelines offering a one-part volumetric small customer sales or firm transportation service rate to continue to offer firm and no-notice transportation to small customers on the same basis after restructuring, but that these benefits were circumscribed by the Commission.

5. ANR pointed out that Order No. 636-A made clear that small customers would not be provided a special marketing advantage and required that customers electing to retain or receive small customer service be precluded from shipping gas under any interruptible transportation service or as a replacement shipper under a capacity release mechanism, unless the customer had exhausted the daily levels of firm service entitlement under its small customer rate schedule for that day. The specific language in Order No. 636-A reads as follows:

Therefore, the Commission will preclude the small customer from shipping gas under available interruptible transportation service on the pipeline or shipping gas as a replacement shipper under the capacity releasing mechanism before it exhausts its firm entitlement to service under a small customer rate schedule.⁵

In its filing, ANR proposed to modify the language in section 5.2.1 (e) of its current tariff to preclude an STS shipper from using non-STS firm transportation service as well, until

³ ANR Pipeline Company, FERC NGA Gas Tariff, ANR Tariffs; [5.2.1 - Rate Sch STS, Availability, 1.0.0](#); [6.18.12 - GT&C, In-Field Storage Transfers, 1.0.0](#).

⁴ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

⁵ Order No. 636-A, FERC Stats. & Regs. ¶ 30,950 at 30,546 (1992) (footnote omitted); *see also* Order No. 636-A, FERC Stats. & Regs. ¶ 30,950 at 30,600.

such time as the same condition applicable to a small customer's use of interruptible transportation service and released capacity was met, i.e., exhaustion of the small customer's STS entitlement. Specifically, ANR proposed to clarify that an STS customer may not use a non-STS firm or interruptible transportation service on any given day, nor receive gas for its integrated gas system from third-parties using ANR's transportation service, nor make use of released capacity, unless that STS customer has first met its contracted-for maximum daily quantity (MDQ) for STS service.

6. In addition, ANR proposed to modify the language in sections 5.2.1 (e) and 6.18.12 to preclude the use of in-field storage transfers by small customers. ANR asserts that these tariff modifications are necessary to eliminate an STS loophole that permits an STS shipper to receive storage and related transportation services at no cost via in-field transfers, without first using all of its STS daily entitlement. Specifically, ANR modified section 5.21 (e) to state that an STS shipper shall not be eligible for in-field transfers. ANR similarly revised section 6.18.12 to exclude STS customers from being eligible for in-field transfers for any gas requirements for which a customer has contracted under Rate Schedule STS.

7. ANR claimed that it recently became aware that an STS customer could purchase part, or all, of its gas requirements via an in-field storage transfer, and subsequently withdraw and redeliver to its STS delivery point. Since customers using storage services on ANR pay applicable transportation service charges and fees when gas is injected into storage accounts, and pay nothing when gas is withdrawn, no transportation service charge would be incurred.

8. ANR contended that its proposed tariff revisions are consistent with Order No. 636-A and the Commission's order on ANR's Order No. 636 compliance filing, which required small STS customers to use all their STS daily capacity before they use other unbundled services, such as interruptible transportation service or capacity release.

9. On June 12, 2013, City Gas Company (City Gas), an STS customer, filed a protest to ANR's proposal to require STS shippers to use their full STS entitlements before using other firm services. City Gas stated that it has been an STS shipper on ANR since the inception of the service in 1993. It stated that, since 2003 (and 1993 for certain agreements) it has also taken service from ANR pursuant to three FTS-1 firm service agreements with total entitlements of 1,125 Dth per day. City Gas argued that ANR's proposed changes would inhibit its use of its FTS-1 firm transportation service agreements, and thereby cause it to incur the cost of the unutilized FTS service, which requires payment of reservation charges if not used. City Gas urged the Commission not to allow ANR's proposed tariff sheets to take effect, or alternatively, to suspend the

effectiveness of the proposed changes for the maximum period allowed by law and convene a technical conference to address the issues raised in its protest.⁶

10. City Gas explained that ANR's proposal would effectively make its existing Rate Schedule FTS-1 contracts unusable because it would be unable to make timely firm FTS service nominations and then use its STS no-notice service to handle swings and remaining volumes as permitted by ANR's current tariff. City Gas protested that ANR's proposal would result in its having to pay reservation charges under its FTS-1 agreements despite the fact that they would be virtually impossible to use. City Gas argued that it would be unjust and unreasonable to allow ANR to limit the use of its FTS-1 firm transportation service when the intended limitation imposed on STS shippers by Order No. 636-A pertains only to the use of interruptible service and released capacity.

11. Finding merit in City Gas's concerns, the June 27 Letter Order found ANR's Tariff Filing unjust and unreasonable, and rejected the proposed revisions to sections 5.2.1 and 6.18.12 of ANR's FERC Gas Tariff.

12. ANR had contended that the use of non-STS related transportation and storage services by small customers prior to using their entire daily STS entitlements is contrary to the Commission's policy as enunciated in Order No. 636-A. According to ANR, "it was clearly the intent of Order No. 636 and ANR's STS service, as approved in its Restructuring Filing, to limit the availability of non-STS transportation and storage services for those customers that have contracted for small customer service until such customers had exceeded their daily STS entitlements."⁷ The June 27 Letter Order, however, stated that ANR imputed a broader intent to Order No. 636 than was actually there.

13. Accordingly, the June 27 Letter Order held that Order No. 636-A did not include *firm* transportation service among the services small customers were barred from using prior to exhausting their STS entitlements, but only required that STS customers could not ship gas under any interruptible transportation service or as a replacement shipper using capacity release, until the STS customer had used all of its STS MDQ for that day.

14. The June 27 Letter Order also found that ANR's proposal to preclude the use of in-field storage transfers by STS shippers was unsupported, since there appeared to be no basis why an STS shipper, even if also an FTS shipper, should be treated any differently

⁶ The Town of Florence, which had filed a timely motion to intervene, filed supplemental comments on June 20, 2013 protesting ANR's Tariff Filing and expressly supporting City Gas's protest. Stating that it is similarly situated to City Gas, its comments echo those of City Gas, and it asked for the same relief.

⁷ ANR Tariff Filing at 4.

than other FTS shippers engaging in the same type of transactions. The June 27 Letter Order did not discuss ANR's other proposed tariff changes.

II. Rehearing Request

15. At the outset, ANR states that its existing tariff includes the restrictions on small customers using interruptible service or capacity release before exhausting its daily entitlement under the STS rate schedule that were delineated in Order No. 636-A. According to ANR, such restrictions reflect the Commission's recognition that restrictions are needed to prevent small customers paying a volumetric rate from obtaining transportation from other sources and depriving a pipeline of the opportunity to recover the costs allocated to the small customer transportation service. ANR argues that its proposed tariff changes adding other restrictions on small customers are consistent with the policy underlying the restrictions imposed on small customers in Order No. 636, notwithstanding the June 27 Letter Order's contrary finding.

16. In this regard, ANR states that while its proposed changes related to firm transportation were not expressly addressed in Order No. 636, they nonetheless represent other ways in which small customers have been avoiding paying for STS service by using alternative means to deliver gas to their city-gate delivery points. ANR identified three of these ways as follows:

- a. Buying gas from third parties such as gas marketers and using the third party's capacity on ANR on a secondary basis to deliver the gas to their delivery points;
- b. Subscribing to another firm service from ANR and using that firm service prior to exhausting its daily STS entitlement; and
- c. Using an in-field storage transfer when ANR had not historically charged a transportation charge to STS customers in connection with withdrawals from storage.

17. Moreover, ANR states that it also proposed another provision in Rate Schedule STS to clarify that volumes that were delivered to an end-user behind an STS shipper's city-gate under a separate transportation service agreement with such end-user would not be considered to be included within the STS shipper's daily entitlement. This ensures that such end-use volumes will not cause the STS shipper to exceed the maximum volume that would cause it to become ineligible for service under the small customer rate schedule. It also ensures that such end-use volumes will not be considered in determining whether an STS shipper has exhausted its STS daily entitlement for purposes of the existing and proposed tariff restrictions on receiving gas from other sources. As explained by ANR, this proposed revision properly excludes such volumes,

which do not flow under an STS shipper's contract, from counting toward that shipper's daily entitlement for purposes of the restrictions.

18. Although City Gas and the Town of Florence filed protests to ANR's proposal to prevent small customers from using other firm transportation service prior to exhausting their STS entitlement, no protests were filed with respect to the other three changes proposed by ANR. Therefore, ANR argues that the other non-protested tariff changes in its filing were improperly rejected without adequate discussion.

19. In support of its proposal to prohibit small customers from using third parties to have gas delivered to their delivery points prior to exhausting their small customer rate schedule entitlement, ANR explains that this issue was expressly addressed in Order No. 636-B. Specifically, Tenneco argued that no other shipper should be permitted to use a small customer's delivery point as a secondary point because that would allow small shippers to circumvent the Commission's restrictions on interruptible transportation and capacity release by simply buying gas from third party shippers at their delivery point. ANR quotes the Commission's response to Tenneco's argument as follows:

The Commission clarifies that its intent was that small customers receiving service at the small customer rate must first use the pipeline's firm transportation under the small customer rate schedule to provide the pipeline with the opportunity to recover its costs assigned to that service. Tenneco's argument comports with the Commission's interpretation of its regulations because it would prohibit evasion of the pipeline's firm transportation under the small customer service. A small customer should not be able to receive gas from third parties at the small customer's delivery point unless the small customer has exhausted its daily level of firm entitlement for that day in the aggregate.⁸

Thus, ANR contends that the Commission has already held that the precise restriction that it proposed in its filing is reasonable, and it should therefore be approved.

20. Regarding the protests by City Gas and the Town of Florence, ANR acknowledges that Order No. 636-A only specifies restrictions on small customers' use of interruptible transportation and capacity release.⁹ However, ANR contends that the Commission did not need to mention other restrictions that are consistent with the Commission's policy of preventing small customers from using the volumetric rate to avoid payment of the costs allocated to the STS service. Indeed, ANR refers to Order No. 636-B, where the Commission clarified "that its intent was that small customers receiving service at the

⁸ Order No. 636-B, 61 FERC ¶ 61,272 at 62,021.

⁹ Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, at 30,600.

small customer rate must first use the pipeline's firm transportation under the small customer rate schedule to provide the pipeline with an opportunity to recover its costs assigned to that service."¹⁰ Therefore, ANR argues that the use of other firm services held by small customers on ANR to ship gas to their delivery points before exhausting their STS daily entitlement should be prohibited.

21. With respect to the Commission's rejection of ANR's proposal regarding the use of in-field storage transfers by small customers, ANR states that footnote 13 in its filing contained "an inadvertent erroneous statement . . . which led the Commission to believe that FTS, as well as STS shippers were not charged for transportation service in connection with storage withdrawals"¹¹ According to ANR, the footnote should have stated that "*only STS customers* do not pay transportation charges associated with storage withdrawals."¹² With this correction, ANR argues that in-field storage transfers by small customers should be similarly prohibited until they have exhausted their STS daily entitlement.

22. Finally, ANR believes that the Commission should approve its proposal to clarify that an end user's volumes delivered behind an STS shipper's delivery point are not included in that STS shipper's daily STS entitlement. In ANR's view, the Commission inadvertently rejected this proposal when it rejected ANR's filing in its entirety. As ANR explains, this proposal benefits STS shippers by ensuring that these end-use volumes will not cause an STS shipper to exceed the threshold maximum volume under the STS rate schedule and render that shipper ineligible for the small customer service. It also ensures that only gas delivered under an STS shipper's contract will be counted in determining whether the STS shipper has exhausted its STS daily entitlement.

23. On August 2, 2013, City Gas filed an answer to ANR's request for rehearing, and ANR filed an answer to City Gas's answer on August 16, 2013. Section 385.213 of the Commission's regulations prohibits answers to requests for rehearing, and answers to answers, unless otherwise ordered by the decisional authority. The City Gas and ANR answers are therefore rejected.

III. Commission Determination

24. In Order No. 636, the Commission stated that small customers could continue to receive firm transportation under a one-part volumetric rate computed at an imputed load

¹⁰ Order No. 636-B, 61 FERC ¶ 61,272 at 62,021.

¹¹ ANR Request for Rehearing at 4, n.4.

¹² *Id.* (emphasis in original).

factor similar to the manner in which their sales rates were determined. In Order No. 636-A, the Commission on rehearing made several changes to address small customer concerns. Among other things, the Commission stated that the rate for the small customer class must be computed using a load factor no less than the load factor used to compute the existing small customer rate.

25. However, as ANR noted, the Commission added that it did not intend to give small customers a special marketing advantage. Therefore, the Commission stated that small customers would be precluded from shipping gas under available interruptible transportation service on the pipeline or from shipping gas as a replacement shipper under the capacity releasing mechanism before it exhausts its firm entitlement to service under a small customer rate schedule.

26. As ANR also noted, the Commission in Order No. 636-B went beyond the small customer restrictions it had established in Order No. 636-A. Specifically, Tenneco argued in that proceeding that “no other shipper should be permitted to use the small customer’s delivery point(s) as secondary points under a firm agreement, and small customers must be prohibited from receiving gas at their delivery points from an [interruptible transportation] shipper.” Otherwise, Tenneco contended that “a small customer could circumvent the Commission’s restrictions by simply buying gas from a third party shipper at its delivery point and receiving the difference between the shipper’s transportation and its own [firm transportation] rate through the price it would pay for the gas.”¹³

27. The Commission responded to Tenneco’s argument by clarifying that “its intent was that small customers receiving service at the small customer rate must first use the pipeline’s firm transportation under the small customer rate schedule to provide the pipeline with the opportunity to recover its costs assigned to that service.”¹⁴ As a result, the Commission stated that Tenneco’s position comports with its interpretation of Commission regulations because it would prohibit evasion of the pipeline’s firm transportation under the small customer service. Reiterating its policy, the Commission summed up by stating that “[a] small customer should not be able to receive gas from third parties at the small customer’s delivery points unless the small customer has exhausted its daily level of firm entitlement for that day in the aggregate.”¹⁵

28. In this regard, ANR is correct that the Commission’s general policy is to prevent

¹³ Order No. 636-B, 61 FERC ¶ 61,272 at 62,021.

¹⁴ *Id.*

¹⁵ *Id.*

small customers from depriving pipelines of the opportunity to recover the costs allocated to the small customer transportation service. However, we find it unreasonable for ANR to add new restrictions on STS shippers' use of other services without filing a general section 4 rate case. Section 5.2.1 of the STS Rate Schedule permitting STS shippers to contract for some FTS service in addition to their STS service has been in effect since November 1, 1993, and City Gas has contracted for FTS service since that time.¹⁶ Therefore, when the parties settled ANR's last rate case in 1997,¹⁷ STS shippers had the ability to use their FTS contracts first and to purchase gas from third parties at their delivery points, and ANR has provided no evidence that they did not do so. It is thus possible that the rates that were agreed to in the black-box settlement in that case reflected the potential for STS customers to use their FTS contracts first and/or purchase gas from third parties at their delivery points, thus reducing their load factor usage of the STS service.

29. Therefore, ANR's proposals to require STS shippers to make greater use of their STS service before exercising other options could lead to their using their STS service at a higher load factor than assumed in ANR's last rate case. It follows that adoption of ANR's proposals could require reconsideration of the proper design of ANR's STS rate. For example, if ANR's proposals would require STS customers to use the STS service at a higher load factor than reflected in ANR's existing rates, then the load factor used to derive the one-part STS rate from the two-part FTS rate may need to be increased, which would have the effect of lowering the STS rate. Because such issues involve cost allocations among ANR's different customer classes, they must be addressed in a general section 4 rate case where all the pipeline's costs and revenues are before the Commission, not in a limited section 4 proceeding such as this.¹⁸

30. Underlying the Commission's decision is the fact that ANR voluntarily entered into two-part FTS contracts with small customers like City Gas years ago and set rates that established cost allocations among different groups of customers. Since this state of affairs has been going on for as long as twenty years, it appears that ANR has acquiesced in how City Gas has been using its FTS contracts. Over these years, the costs incurred by ANR to serve its customers have presumably changed significantly. Therefore, regardless of whether ANR's proposals are consistent with the expressed intent of the Commission in Order No. 636-B, they raise cost allocation issues that, as noted above,

¹⁶ City Gas Protest at 4.

¹⁷ *ANR Pipeline Co.*, 82 FERC ¶ 61,145 (1998). That rate case was filed in Docket No. RP94-43.

¹⁸ Moreover, ANR does not contend that its proposed tariff changes are necessary to address any operational issue.

must first be resolved in the context of a general rate case under section 4 of the Natural Gas Act (NGA).

31. The Commission will also deny ANR's proposed tariff change to prohibit small customers from using in-field storage transfers in circumstances where ANR has not historically charged a transportation charge to STS customers in connection with withdrawals from storage. ANR argues that such in-field storage transfers represent yet another way that a small customer can avoid costs that have been allocated to the STS rate schedule by making cost-free withdrawals from storage. However, in ANR's restructuring proceeding, the Commission noted that the level of storage costs and storage allocations could be re-examined in ANR's next general rate case, specifically referring to Docket No. RP94-43, which resulted in a black-box settlement. Whatever assumptions were made in that proceedings regarding cost allocations are still in effect. Therefore, as with ANR's other proposals, this proposed tariff change has implications for cost allocation between different groups of customers that must be addressed in a section 4 rate case. Moreover, prohibiting STS customers from being eligible for in-field storage transfers appears to implicate the Commission's regulations at 18 C.F.R. § 284.7(b)(3), which provide that "[a]n interstate pipeline that offers transportation service on a firm basis . . . may not include in its tariff any provision that inhibits the development of market centers." As such, it would be contrary to the Commission's directive to ANR to permit in-field transfers between all storage services.¹⁹

32. Going forward, ANR remains free to propose the changes that have been rejected here, but must do so as part of a general NGA section 4 rate proceeding, where all issues of cost allocation/rate design may be considered to achieve a just and reasonable result.

33. Finally, the Commission approves ANR's proposed tariff change to clarify that volumes that were delivered to an end-user behind an STS shipper's city-gate under a separate transportation service agreement with the end-user would not be considered to be included within the STS shipper's daily entitlement. The Commission will approve ANR's proposed tariff change, one of whose purposes, as explained by ANR, is to benefit small customers, because it appears unobjectionable and was not expressly considered in the June 27 Letter Order.

The Commission orders:

ANR's request for rehearing of the June 27, 2013 Letter Order is denied in part and granted in part, as discussed in the body of this order.

¹⁹ *ANR Pipeline Co.*, 68 FERC ¶ 61,009, at 61,047 (1994).

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.