

149 FERC ¶ 61,200
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Great Lakes Gas Transmission Limited Partnership	Docket Nos. RP15-138-000
ANR Pipeline Company	RP15-139-000
ANR Pipeline Company	RP13-743-000 RP13-743-001 RP13-743-002 (Consolidated)
ANR Pipeline Company	Docket No. RP14-650-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS, SUBJECT TO
REFUND, ESTABLISHING HEARING, AND CONSOLIDATING PROCEEDINGS
FOR HEARING

(Issued December 3, 2014)

1. On November 3, 2014, both Great Lakes Gas Transmission Company (Great Lakes) and ANR Pipeline Company (ANR) made interrelated tariff filings to reflect a conversion of certain individually certificated service agreements to Part 284 service.
2. To accomplish this, Great Lakes filed in Docket Number RP15-138-000 a tariff record to become part of its FERC Gas Tariff, Third Revised Volume No. 1 (Great Lakes Volume 1 Tariff),¹ and in its FERC Gas Tariff, Original Volume No. 2 (Great Lakes Volume 2 Tariff) Great Lakes reflected the conversion of the three rate schedules to Part 284 service.²

¹ Great Lakes Gas Transmission Limited Partnership, FERC NGA Gas Tariff, GLGT Tariffs, [PART 1, TABLE OF CONTENTS, 6.0.0.](#)

² The converted Great Lakes Rate Schedules are T-8, T-9, and T-10.

3. For its part, ANR filed on November 3, 2014, in Docket No. RP15-139-000 a tariff record to become part of its FERC Gas Tariff, Third Revised Volume No. 1 (ANR Volume 1 Tariff).³ ANR states that it has converted three individually-certificated Part 157 transportation and exchange agreements with Great Lakes to open-access service, as reflected in ANR's FERC Gas Tariff, Original Volume No. 2 (ANR Volume 2 Tariff), effective November 1, 2014.⁴ Great Lakes and ANR ask the Commission to grant waiver of section 154.207 of the Commission's regulations⁵ to allow the filed tariff sections to be retroactively effective as of November 1, 2014. As discussed below, the Commission denies the request for waiver, accepts and suspends Great Lakes' and ANR's tariff records to become effective May 3, 2015, subject to refund; establishes hearing procedures; and consolidates Docket Nos. RP15-138-000 and RP15-139-000 with the ongoing proceedings in Docket Nos. RP13-743-002, *et al.*

Description of the Filings

4. Great Lakes and ANR state that the Commission authorized the three Part 157 contracts between 1979 and 1980. Great Lakes and ANR further state that, on October 14, 2014, ANR notified Great Lakes that it desired to convert the three Part 157 contracts to Part 284 service. Great Lakes and ANR maintain that section 157.217(a) of the Commission's regulations⁶ grants certificate holders under Subpart F of Part 157 automatic authorization to permit existing customers to request, subject to certain conditions, to convert from individually certificated transportation service under Part 157 to Part 284 transportation service. In the instant filing, Great Lakes and ANR specifically request to remove references to the Part 157 contracts from their tariffs. Great Lakes and ANR characterize these filings as routine, ministerial acts.

Notice of Filing, Interventions, Protests, Comments, and Answers

5. Public notice of the Great Lakes and ANR filings was issued November 4, 2014. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁷ Pursuant to Rule 214,⁸ all timely-filed motions to intervene and any

³ ANR Pipeline Company, FERC NGA Gas Tariff, ANR Tariffs, [PART 1, TABLE OF CONTENTS, 31.0.0.](#)

⁴ ANR's converted Rate Schedules X-100, X-101, and X-117 correspond to the Great Lakes Rate Schedules T-8, T-9, and T-10.

⁵ 18 C.F.R. § 154.207 (2014).

⁶ 18 C.F.R. § 154.217(a) (2014).

⁷ 18 C.F.R. § 154.210 (2014).

unopposed motions to intervene filed out-of-time 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. As discussed below, protests and adverse comments were filed.

6. Several Protestors⁹ assert that the Commission should reject the Great Lakes and ANR filings. They emphasize that the service conversions attempted in these filings are not arms-length transactions and that these affiliated companies intend to terminate Part 157 services prior to the expiration of the contract terms and replace those services with Part 284 services at a higher rate. Protestors argue that Great Lakes' and ANR's filings lack information that would allow the Protestors to determine, *inter alia*, the rationale for the change, the potential rate impact, and whether ANR will seek recovery of the Part 284 rates via its Deferred Transportation Cost Adjustment Mechanism (DTCA). Protestors point out that information on Great Lakes' website indicates that the new Part 284 services will be priced at the maximum tariff rates.¹⁰ Protestors calculate that this will result in an estimated cost to them, if ANR were to flow the costs through its DTCA, of approximately \$40 million.

7. If the Commission does not reject the filings, the Protestors ask the Commission to accept and suspend them, make them subject to refund, establish hearing proceedings, and consolidate these two filings with the pending proceedings in Docket No. RP13-743-002, *et al.*¹¹ Protestors assert that the earlier proceeding involves ANR's effort to recover disputed costs through its DTCA arising from a similar situation in which ANR eliminated Part 157 service and converted it to Part 284 service at maximum rates on the Great Lakes system. Protestors also point out that the Commission is holding in abeyance the most recent ANR DTCA filing (Docket No. RP14-650-000¹²) pending the outcome of the ongoing prior year's DTCA proceedings in Docket Nos. RP13-743-002, *et al.* Protestors state that among the costs ANR previously has recovered through the

⁸ 18 C.F.R. § 385.214 (2014).

⁹ The Protesters for each of the filings are the Wisconsin Distributor Group; the Integrys Gas Group; and Northern States Power Company-Minnesota and Northern States Power Company-Wisconsin (jointly, NSP). Sequent Energy Management, L.P. filed comments.

¹⁰ See <http://www.glt.com/infopostings/ebbmain.asp>.

¹¹ *ANR Pipeline Co.*, 147 FERC ¶ 61,124 (2014).

¹² *ANR Pipeline Co.*, 147 FERC ¶ 61,077 (2014).

DTCA are costs associated with transportation under Great Lakes' Rate Schedules T-8, T-9, and T-10.

8. According to the Protestors, the potential rate impact, together with the affiliate relationship, takes the proposed abandonment of the Part 157 services beyond the scope of the automatic abandonment authority permitted by section 157.217, which was intended only for routine abandonments without the potential of substantial cost impact. They contend that Great Lakes should seek formal abandonment authority from the Commission pursuant to section 157.18 of the Commission's regulations for the abandonments sought here.¹³

9. Finally, Protestors argue that even if the Commission does not reject the filings outright, it should reject Great Lakes' and ANR's unsupported request for waiver of the statutory 30-day notice period that would allow Great Lakes and ANR to make the proposed tariff changes retroactively effective.

10. ANR filed an answer to the protests in Docket No. RP15-139-000, and Great Lakes filed an answer in Docket No. RP15-138-000. While the Commission's regulations prohibit answers to protests unless otherwise ordered by the decisional authority,¹⁴ the Commission has considered ANR's and Great Lakes' answers because they clarify for the Commission the disparate views of the issues raised by the pleadings, particularly whether the subject filings are truly routine, or are inter-related with the ongoing DTCA proceedings, even prior to the insertion of the costs of the subject conversions into the DTCA.

11. In its answer, Great Lakes argues that the comments and protests filed by the Protesters have no merit and should be given no weight. In its answer, ANR stresses that its actions are routine and ministerial, and that no action other than acceptance without condition is appropriate in the instant case. ANR asserts that no issue is joined until it seeks to flow through any costs of the contract conversions to its customers via the DTCA mechanism. ANR reviews the history of the three Part 157 transportation agreements at issue and the contracts' relationship to the Rate Schedule X-1 Agreement, which is the subject of the proceedings in Docket No. RP13-743-002. ANR explains that the primary term of the Rate Schedules T-8, T-9, and T-10 agreements expired approximately 15-20 years ago and that the contracts have remained in effect thereafter on a year-to-year evergreen basis, subject to termination by either party with 12-months' notice. ANR maintains that reduced levels of natural gas transported by its affiliate TransCanada Pipelines Limited prompted it to enter into contracts with Great Lakes to

¹³ 18 C.F.R. § 157.18 (2014).

¹⁴ 18 C.F.R. § 385.213(a)(2) (2014).

functionally replace some of the service previously provided under the Rate Schedule X-1 Agreement, and it is seeking in Docket No. RP13-743-002, recovery of the costs incurred from said contracts via the Rate Schedule X-1 Agreement's eligibility for flow-through under the DTCA. ANR points out that the three converted contracts at issue in the instant proceeding also relied to a great extent on the volumes flowing under the Rate Schedule X-1 Agreement. ANR further claims that the rates under the Part 157 contracts are no longer justified from Great Lakes' perspective because the conditions presented many years ago no longer exist after TransCanada reduced the levels of natural gas it flowed under the Rate Schedule X-1 Agreement.

12. ANR also challenges the allegations that the affiliate relationship of ANR and Great Lakes renders the conversion non-routine or possibly inappropriate. However, ANR states that any allegations of possible affiliate abuse need not give rise to any action at this juncture, but can be addressed when ANR seeks recovery of the costs incurred under the Part 284 contracts.

13. Finally, ANR submits that the filing should not be suspended given the limited purpose of the filing and that the tariff changes should be made effective retroactively on November 1, 2014, as requested. ANR also asserts that the filing should not be consolidated with Docket No. RP13-743-002. ANR states that the requests for consolidation are premature, for much the same reasons mentioned above.

Commission Analysis

14. The Commission finds that Great Lakes' and ANR's filings are not routine in the circumstances presented. Given the affiliate relationship between the parties to the subject contracts, and the fact that the costs arising from the conversion may well flow through to shippers under the same DTCA mechanism already subject to hearing and review, there is no basis for unconditional acceptance of the filings, or for retroactive effectiveness. Great Lakes' and ANR's contract conversions here raise many of the same issues being examined in Docket No. RP13-743-002 and being held in abeyance in Docket No. RP14-650-000. Thus, Great Lakes' and ANR's filings and the protests raise many issues that cannot be resolved on the basis of the existing record, and some of the same issues are already joined in the ongoing DTCA proceedings. Accordingly, the Commission will consolidate the filings in Docket Nos. RP15-138-000 and RP15-139-000 with the ongoing proceedings in Docket Nos. RP13-743-002, *et al.*, which currently are pending before a Settlement Judge, and suspend their effectiveness for the maximum statutory period, and set them for hearing.

Suspension

15. Based upon review of the filings the Commission finds that the proposed tariff changes in Docket Nos. RP15-138-000 and RP15-139-000 have not been shown to be just and reasonable, and may be unjust, unreasonable and unduly discriminatory or

otherwise unlawful. Accordingly, the Commission will accept and suspend the effectiveness of the proposed tariff records for the period set forth below, establish hearing procedures, and consolidate the filings with the ongoing proceedings in Docket Nos. RP13-743-002, *et al.*

16. The Commission's policy regarding tariff filings is that they 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.¹⁵ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.¹⁶ Such circumstances do not exist here. Therefore, the Commission shall suspend Great Lakes' and ANR's proposed tariff records to be effective May 3, 2015, subject to refund and the outcome of the hearing in the consolidated proceedings, as described above.

The Commission orders:

(A) Great Lakes' tariff record in Docket No. RP15-138-000 and ANR's tariff record in Docket No. RP15-139-000 are accepted and suspended to become effective May 3, 2015, subject to refund and conditions.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held in Docket Nos. RP15-138-000 and RP15-139-000 concerning the lawfulness of the proposed tariff changes.

(C) The proceedings in Docket Nos. RP15-138-000 and RP15-139-000 are consolidated with the ongoing proceedings in Docket Nos. RP13-743-002, *et al.*

¹⁵ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

¹⁶ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

(D) The Presiding Administrative Law Judge in Docket No. RP13-743-002, *et al.* shall determine the procedures best suited to accommodate the consolidation ordered herein.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.