

154 FERC ¶ 61,232
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ANR Pipeline Company

Docket No. RP16-608-000

ORDER ACCEPTING TARIFF RECORDS AND AGREEMENT SUBJECT TO
CONDITION

(Issued March 24, 2016)

1. On February 12, 2016, ANR Pipeline Company (ANR) filed a non-conforming firm storage service agreement with J. Aron & Co. (J. Aron) along with tariff records to revise its list of non-conforming service agreements.¹ ANR requests the agreement and tariff records be accepted effective April 1, 2016. As discussed below, the Commission accepts ANR's proposed agreement and tariff records effective April 1, 2016, subject to condition.

I. Background

2. ANR states that it is filing the J. Aron storage agreement as non-conforming service contract because it contains a provision that deviates from the *pro forma* firm storage service agreement. Furthermore, ANR acknowledges that provisions of the agreement are not contemplated by its tariff. The proposed J. Aron storage agreement differs from the *pro forma* withdrawal provisions because Article 8, Further Agreement, establishes a maximum daily withdrawal amount of zero for the first twelve months of the agreement (April 2016 thru March 2017), while authorizing withdrawal of 1/30th of J. Aron's stored natural gas per day in April 2017.

¹ ANR files the executed, Rate Schedule FSS agreement with J. Aron as tariff record 10.44 under §§ 154.112(b) and 154.201 of the Commission's regulations. ANR Pipeline Company, FERC NGA Gas Tariff, ANR Tariffs, [PART 1, TABLE OF CONTENTS, 32.0.0](#); [6.28 - GT&C, Non-Conforming Agreements, 14.0.0](#); and [10.44-Non-Conforming Agmt, J. Aron & Company FSS Agmt \(#127260\), 0.0.0](#).

3. In addition, the proposed storage agreement prohibits J. Aron from both completing an infield withdrawal transfer and from nominating a withdrawal from the agreement, while the daily withdrawal amount is zero. ANR explains that such terms are not in its tariff and are intended to ensure that J. Aron's natural gas will remain in storage beyond the winter withdrawal period, which will permit the pipeline to use otherwise stranded capacity and sell additional storage service.

4. ANR acknowledges that its tariff does not provide for a zero withdrawal nomination or for the nomination amount to vary over the term of a service agreement. ANR reports that under its tariff, shippers requesting storage service must nominate a maximum daily withdrawal amount, which must be at least 1/213th of the shippers' maximum storage quantity and may be as much as 1/10th. The nomination allows the shipper to withdraw its stored natural gas in as few as 10 days or as many as 213. ANR states that shippers have tended to take advantage of the flexibility by seeking delivery over fewer days, which, according to ANR, has "caused a mismatch between deliverability and capacity" during the later portion of the traditional, winter withdrawal period. ANR reports that this tendency causes storage capacity to be stranded due to a lack of deliverability, and it may be unable to sell additional storage service.

5. ANR indicates that it is willing to negotiate similar agreements with other shippers to increase the availability of seasonal, ratcheted storage services. Due to the reasons cited in its filing, ANR asks the Commission to accept the agreement as not a material deviation. In the alternative, ANR requests the Commission approve the non-conforming provision in the storage agreement because it does not change the conditions under which service is provided or present a risk of undue discrimination.

6. Public notice of this filing was issued on February 17, 2016. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.² Pursuant to Rule 214,³ all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. No party filed a protest or comments.

II. Commission Determination

7. A material deviation is any provision in a service agreement that goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and affects the substantive rights of the parties.⁴ The Commission prohibits negotiated terms

² 18 C.F.R. § 154.210 (2015).

³ 18 C.F.R. § 385.214 (2015).

⁴ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001).

and conditions of service that result in a shipper receiving a different quality of service than that offered other shippers under the pipeline's generally applicable tariff or that affect the quality of service received by others.⁵ Provisions that materially deviate from the corresponding *pro forma* agreement fall into two general categories: provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers and provisions the Commission can permit without a substantial risk of undue discrimination.⁶

8. Based on our review of ANR's proposed non-conforming storage agreement with J. Aron and the differences between ANR's *pro forma* Rate Schedule FSS and the J. Aron storage agreement, we find that ANR has not demonstrated that the proposed provisions allowing variation to the maximum withdrawal quantities reflected in Article 8 of the J. Aron storage agreement are just and reasonable. Similarly, the Commission finds that ANR has not demonstrated that the agreement's prohibition on withdrawal transfers and related provisions is just and reasonable. The Commission has held that services that deviate from the pipeline's *pro forma* tariff provisions by permitting shippers to obtain varying maximum quantities (such as seasonal services) contain a valuable right that must be offered to all shippers pursuant to not unduly discriminatory conditions.⁷ In this case, the proposed non-conforming provisions fundamentally change the nature of the service set forth in Rate Schedule FSS and could create a substantial risk of undue discrimination.

9. In certain circumstances, the Commission may permit a shipper to elect to delete a proposed non-conforming provision in order to bring the proposed agreement into compliance, so long as any remaining non-conforming provisions do not present a substantial risk of undue discrimination. Although ANR clearly has the option to delete the provision, in this instance ANR may decide that it is not possible to take out the non-conforming provision while maintaining the spirit of the agreement. The Commission finds that it will accept the tariff records subject to ANR making a compliance filing within 30 days of the date of this order to bring the instant filing into compliance. The Commission directs ANR to either (1) change the contract so that the daily withdrawal quantity and transfer rights set forth in the contract are consistent with Rate Schedule FSS

⁵ *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 28 (2010).

⁶ *Equitrans, L.P.*, 130 FERC ¶ 61,024, at P 5 (2010).

⁷ *E.g.*, *Granite State Gas Transmission Inc.*, 112 FERC ¶ 61,201, at P 4 (2005); *Ruby Pipeline, L.L.C.*, 138 FERC ¶ 61,220, at P 6 (2012); *Carolina Gas Transmission Corp.*, 143 FERC ¶ 61,081, at P 7 (2013); *Guardian Pipeline, L.L.C.*, 150 FERC ¶ 61,060 (2015).

as set forth in ANR's tariff; or, (2) revise its tariff to make this fundamental change in the way storage is utilized on its system to all storage customers.

The Commission orders:

(A) The tariff records reflected in the Appendix are accepted to be effective April 1, 2016, subject to the conditions discussed in the body of this order.

(B) ANR is required, within 30 days of the issuance of this order, to make a filing with the Commission that either removes the non-conforming provision from the J. Aron agreement or revises its tariff to offer similar flexibility to all customers, consistent with the discussion in this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.