

155 FERC ¶ 61,217
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. RP16-440-001

ORDER GRANTING REHEARING AND SETTING ISSUE FOR HEARING

(Issued May 31, 2016)

I. Background

1. In a February 29, 2016 order, the Commission accepted and suspended, subject to refund, conditions, and the outcome of a hearing, certain tariff records filed by ANR Pipeline Company (ANR) to implement a general rate case pursuant to section 4 of the Natural Gas Act (NGA), as well as changes in ANR's General Terms and Conditions (GT&C).¹

2. ANR included both actual tariff records and *pro forma* tariff records in its rate case filing. The primary tariff records reflect a substantial increase in ANR's cost of service and generally use the same rate design as underlies ANR's preexisting rates, including ANR's existing seven-zone rate structure. ANR stated that the actual tariff records constitute its "Primary Case." The *pro forma* tariff records reflect the same cost of service as the actual tariff records. However, the *pro forma* tariff records propose to change ANR's rate design from the existing seven-zone rate structure to a four-zone rate structure through the elimination of three existing rate boundaries. ANR stated that the *pro forma* tariff records constitute its "Preferred Case."

3. The Commission could not determine from the pleadings whether ANR's proposed rate and tariff changes were just and reasonable and set all issues presented in the filing for hearing.² In so doing, the Commission stated that it would not take any action on ANR's *pro forma* tariff records proposing the four-zone rate structure.

¹ ANR Pipeline Company, 154 FERC ¶ 61,146 (2016).

² *Id.* PP 7, 12.

4. The Commission explained that “ANR’s *pro forma* filing is a procedurally null alternative, as it is only the actual rate case proffered by ANR with actual tariff records that can be and are being set for hearing. Accordingly, the tariff records that the Commission will set for hearing are only the actual tariff records contained in the Appendix to this order that were designated as ANR’s primary case.”³

5. In its March 8, 2016 motion for clarification, ANR asked the Commission to clarify that the four-zone rate structure proposal is among the issues set for hearing and that the above quoted language only excludes the *pro forma* tariff records themselves. In the alternative, ANR sought rehearing of the Commission’s rejected consideration of its four-zone rate proposal.

6. On March 14, 2016, Antero Resources Corporation (Antero) filed its own request for clarification or rehearing that similarly asked the Commission to clarify that the four-zone rate proposal or any associated rate design proposal are among the issues set for hearing.

7. On March 16, 2016, Gulfport Energy Corporation filed an Answer requesting that the Antero and ANR’s requests be denied. On March 22, 2016, Consumers Energy filed an Answer requesting that the Antero and ANR’s requests be denied. On March 23, 2016, Rice Energy Marketing LLC filed an Answer suggesting that clarification was unnecessary. On March 28, 2016, ANR filed an Answer suggesting that the answers of Consumers Energy and Gulfport Energy were without merit. Rule 713(d)(1) of the Commission’s Rules of Practice and Procedure prohibits an answer to a request for hearing.⁴ Therefore, we reject Gulfport Energy, Rice Energy, Consumers Energy and ANR’s answers.

II. Commission Determination

8. The Commission grants ANR and Antero’s request for clarification and rehearing and will permit the “preferred” four-zone rate structure proposal to be considered among the issues set for hearing.

9. As the rehearing applicants point out, the Commission has permitted natural gas pipelines, as part of a general section 4 rate case filing,⁵ to propose prospective changes to their existing cost allocation and rate design methodologies that will only take effect if

³ *Id.* P 15.

⁴ 18 C.F.R. § 385.713 (2015).

⁵ *Id.* § 154.4(d).

and when the Commission finds the proposed changes to be just and reasonable.⁶ Pipelines set forth these proposals in *pro forma* tariff records which illustrate how such a proposal would be implemented if the Commission approves the proposal and allows it to be implemented in actual tariff records.

10. The Commission's practice of allowing pipelines to propose prospective cost allocation and rate design changes in *pro forma* tariff records as part of an NGA section 4 general rate case filing is an outgrowth of the Supreme Court's decision in *FPC v. Tennessee Gas Transmission Co.*⁷ In that case, the Supreme Court held that, when a pipeline places a proposed change in cost allocation or rate design into effect at the end of the suspension period in an NGA section 4 rate case, the Commission may require the pipeline to make refunds to those shippers whose rates increased under the proposal but cannot authorize surcharges to those shippers whose rates decreased under the proposal. Thus, if the pipeline includes a proposed cost allocation or rate design change in actual tariff records, the pipeline must take the risk that it will underrecover its cost of service during the period the cost allocation/rate design proposal is in effect if the Commission ultimately rejects the proposal.

11. Allowing pipelines to propose prospective changes in cost allocation and rate design in *pro forma* tariff records permits a pipeline to make such a proposal without taking the risk that it will under-recover its cost of service if the Commission ultimately rejects the proposal. At the same time, inclusion of such proposals in *pro forma* tariff records also benefits shippers, because they will not be subject to the cost shifts that result from the rate design changes unless and until the Commission finds those changes to be just and reasonable. Pipelines proposing prospective changes in their rate designs must, of course, comply with all the requirements of Part 154 of our regulations concerning the materials that must be filed in support of any rate change proposal.⁸

⁶ See, e.g., *Northern Natural Gas Co.*, 83 FERC ¶ 61,216, at 61,966 (1998); *Transcontinental Gas Pipe Line Corporation*, 94 FERC ¶ 61,360, at 62,301 (2001); *Viking Gas Transmission Co.*, 98 FERC ¶ 61,066, at 61,175-6 (2002) (*Viking*); *Northern Natural Gas Co.*, 103 FERC ¶ 61,266, at PP 32-49 (2003); *Northern Natural Gas Co.*, 106 FERC ¶ 61,195, at P 27 (2004); *Transcontinental Gas Pipe Line Corp.*, 106 FERC ¶ 61,299, at PP 54, 62-76 (2004); *Northern Border Pipeline Co.*, 113 FERC ¶ 61,230, at P 23 (2005); *Columbia Gulf Transmission Co.*, 133 FERC ¶ 61,18, at PP 7, 59 (2010); and *National Fuel Gas Supply Corp.*, 137 FERC ¶ 61,171, at P 7 (2011). See also *Black Oak Energy, LLC v. PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,013, at P 12 n.17 (2016).

⁷ 371 U.S. 145, 152-53 (1962).

⁸ See, e.g., 154 U.S.C. § 154.301 (2015).

12. While the Commission has, in some instances, rejected *pro forma* tariff records, those cases typically involved merits determinations finding that the proposals in the *pro forma* tariff records are not just and reasonable and are therefore rejected.⁹ In the present case, ANR has included in its filing testimony and workpapers supporting its preferred proposal to shift to a four-zone rate structure, sufficient to satisfy the requirement in section 154.301(c) of the Commission's regulations to include its full case-in-chief in its filing.¹⁰ Accordingly, summary disposition of this issue is not appropriate in this case.

13. Thus, in the circumstances of this case, the Commission includes in the hearing established by the February 29 Order the issue whether ANR's *pro forma* proposal to change its rate zone structure is just and reasonable. As the Commission stated in *Viking*, "[n]o one is adversely impacted by this decision given that the proposal will only be implemented, if at all, on a prospective basis."¹¹ ANR will, of course, have the burden under NGA section 4, to show that its proposed change in its zone-rate structure is just and reasonable.

The Commission orders:

(A) The requests for rehearing are granted as discussed in the body of this Order.

(B) ANR's "preferred" four-zone rate structure and associated rate design proposal shall be considered among the issues set for hearing.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁹ See, e.g., *Algonquin Gas Transmission Co.*, 58 FERC ¶ 61,227 (1992).

¹⁰ See, e.g., Testimony of John Roscher, Exhibit ANR-002 at 7-18.

¹¹ 98 FERC at 61,176.