130 FERC ¶ 61,266
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

ANR Pipeline Company Docket No. RP10-451-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO REFUND AND CONDITIONS

(Issued March 31, 2010)

1. On March 1, 2010, ANR Pipeline Company (ANR) filed revised tariff sheets[1] to comply with the annual gas fuel (hereinafter, fuel) and electric power cost (EPC) re-determination provisions in section 37 of its tariff's General Terms and Conditions (GT&C). ANR requests that the tariff sheets become effective April 1, 2010. For the reasons discussed below, the Commission accepts and suspends ANR's tariff sheets to be effective April 1, 2010, subject to refund, conditions and further orders in this proceeding and Docket No. RP09-428-000.

Background

2. GT&C section 37 authorizes ANR to track and annually revise its in-kind fuel retention percentages and EPC charges for transportation and storage services. The revised fuel retention percentages are based on the previous 12-month period's Transporter's Use (fuel use) and lost-and-unaccounted-for gas (LAUF), calculated by transportation rate segments and storage services. The revised fuel retention percentages may include adjustments for (1) known and measurable changes, and (2) true-ups of previous under and over recoveries of fuel as reflected in the ending balances of the applicable Deferred Use subaccounts. ANR applies the retention percentages to nominated volumes tendered by shippers.

3. GT&C section 37 also authorizes ANR to track and annually revise its EPC charges for electrically-powered compression used in providing transportation services,

[1] Second Revised Sheet No. 10A, Twenty-Eighth Revised Sheet No. 19, Fifth Revised Sheet No. 19A, and Fifteenth Revised Sheet No. 68H to FERC Gas Tariff, Second Revised Volume No. 1.

and storage service at Cold Springs 1. The revised EPC charges may include adjustments for (1) known and measurable changes, and (2) true-ups of previous under and over recoveries of EPC as reflected in the prior period's ending balances of its Deferred EPC subaccounts. ANR bills each shipper monthly for applicable EPC based on the shipper's activity during the previous month times the approved EPC charge.

4. The Cold Springs 1 field, whose working gas capacity is approximately 14.7 Bcf, has electrically-driven compression and also appurtenant facilities that are fueled by natural gas. ANR assesses injections nominated by Cold Springs 1 shippers an incrementally designed in-kind retention percentage, and also bills each shipper monthly for its electric power usage. ANR has historically operated the rolled-in fields as a pool whose working gas capacity is approximately 200 Bcf. The rolled-in fields' compressors are fueled by natural gas rather than electric power. Accordingly, ANR assesses injections nominated by rolled-in shippers an in-kind retention percentage designed to recover the pool's aggregate fuel costs.

5. Cold Springs 1 began operating in 2008. The 2007 order certificating Cold Springs 1 approved ANR's proposed incremental storage rates, but rejected its proposal to roll-in Cold Springs 1 fuel and EPC costs into the rolled-in storage cost recovery mechanism in GT&C section 37.[2] Instead, the 2007 Order required ANR to design Cold Springs 1 fuel and EPC rates incrementally, explaining that if the facility's fuel use exceeded the "system" fuel charge, existing customers could subsidize the expansion shippers.[3] The order therefore required ANR to ensure that the Cold Springs 1 fuel and EPC costs "are the responsibility of only the shippers receiving service under the project and ANR Pipeline, and that no costs attributable to the proposed expansion be charged to existing shippers."[4] However, the order also stated that ANR was not precluded from filing a proposal to assess an appropriate part of such costs to system customers "to the extent that it can demonstrate that system customers benefit from the facilities."[5] The Commission denied ANR's request for rehearing, stating ANR could demonstrate the facility's system benefits to support a request for rolled-in fuel and EPC cost treatment in a future fuel tracker filing.[6]

---

[2] *ANR Pipeline Company*, 119 FERC ¶ 61,220 (2007) (2007 Order), *reh'g denied*, 122 FERC ¶ 61,061 (2008).

[3] The 2007 Order's use of the term "fuel" included EPC.

[4] 2007 Order at P 23.

[5] 2007 Order at P 23.

[6] 122 FERC ¶ 61,061 at P 20.

6. By order dated March 22, 2010, in Docket Nos. RP09-428-000 and 001,[7] the Commission approved ANR's 2009 fuel and EPC tracker filing effective April 1, 2009. The 2010 Order also approved a new charge for in-field transfers between shippers utilizing capacity in ANR's Cold Springs 1 storage field and shippers utilizing ANR's other storage fields (hereinafter, the rolled-in fields), when the shipper requesting and receiving the transfer takes service under Rate Schedule FSS. The charge is equivalent to the fuel and, if applicable, EPC charge(s) for nominated injections into the facility where the shipper requesting the transfer subscribes to capacity. Approval was subject to conditions. As described further, the order also directed ANR and interested parties to file briefs on whether Cold Springs 1 fuel and EPC should be rolled into its system wide fuel rates.

7. ANR's proposals in Docket Nos. RP09-428-000 and RP09-428-001 had been vehemently opposed by Cold Springs 1 shippers in protests and post-technical conference comments. The details of their arguments are described in the 2010 Order. In general, they argued that the in-field transfer charge and ANR's method of implementing the Cold Springs 1 incremental fuel and EPC requirement created unnecessary costs and operational inefficiencies on ANR's system. They predicted that such inefficiencies would have a severe and negative impact on their business transactions with ANR, on the gas commodity trading market between shippers on ANR's system, and on the operational efficiencies that they and ANR had expected Cold Springs 1 to provide. They also requested that the Commission reconsider its decision to require incremental treatment of the Cold Springs 1 fuel and EPC charges.

8. Although the Commission denied the requests for reconsideration of the requirement to design Cold Springs 1 fuel and EPC charges incrementally, it also expressed concern, based on protests and comments in the proceeding, that such requirement may have produced unintended consequences that warranted reconsideration of that decision. Therefore, the 2010 Order directed ANR and all interested parties to file comments addressing the following, and any other relevant, issues: whether any inefficiencies or difficulties are being created due to the separate tracking of costs as mandated by the 2007 Order certificating Cold Springs 1; whether it is appropriate to roll in the Cold Springs 1 fuel and electric costs into ANR's system rates; whether rolling in those costs would have any adverse rate impacts on existing shippers; and whether rolling in those costs would have system benefits. The order directed initial comments to be filed within 20 days of the date of the order and reply comments to be filed 10 days thereafter. The order stated that the Commission would determine the appropriate course of action after the pleadings are reviewed.

---

[7] *ANR Pipeline Company,* 130 FERC ¶ 61,229 (2010) (2010 Order).

9. In the current tracker proceeding, ANR proposes to decrease the Cold Springs 1 fuel retention percentage from 2.06 percent to 1.64 percent, and to increase the Cold Springs 1 EPC charge from $0.1060 per Dth to $0.1909 per Dth. ANR states that the increase in the EPC charge is due to a significant reduction in the injection determinants used in the current EPC charge calculation (6 Bcf) versus roughly 11 Bcf used in the previous period's calculation. ANR explains that the previous period's determinants reflected a conservative estimate of the amount of Cold Springs 1 capacity that would be available for injections at the start of the 2009 injection season. ANR states that based on current inventory levels, it estimates that the field will cycle down to 57 percent or 8 Bcf by March 31, 2010. Thus, the current injection charges for Cold Springs 1 were designed using a 6 Bcf injection level. Finally, ANR states that it factored into its EPC calculations an anticipated rate increase from its electric power provider.

10. ANR also proposes various adjustments in its system-wide transportation fuel and EPC charges, and storage fuel charge. In particular, the system-wide storage fuel retention rate decreases from 1.31 percent to 0.81 percent.

Public Notice and Interventions

11. Public notice of ANR's filing was issued on March 4, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2008)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2008)), all timely filed motions to intervene and any 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.

12. Protests were filed by the Indicated Shippers,[8] Southwest Energy, L.P. (SWE) and Nexen Marketing U.S.A. Inc. (Nexen). In general, they variously reiterate their continuing opposition, detailed in the 2010 Order, to the in-field transfer charge, the requirement to design Cold Springs 1 fuel and EPC costs incrementally, and to the operational and gas accounting procedures ANR implemented in response to such requirement. They assert that the economics of their business transactions, the liquidity of the gas commodity market, and ANR's operational and cost efficiencies have experienced significant negative consequences as a result of the in-field transfer charge, the incremental Cold Springs 1 fuel and EPC requirement, and how ANR has chosen to implement that requirement.

13. The protesters variously request either rejection of the Cold Springs 1 fuel and EPC charges proposed in this proceeding, or if the Commission accepts such charges,

---

[8] The Indicated Shippers consist of Chevron U.S.A. Inc. and ConocoPhillips Company.

that the tariff sheets be suspended, and acceptance be subject to refund and conditioned on the outcome of a final order in Docket No. RP09-428.[9] They also argue that ANR has failed to provide adequate support for the filing, and should be required to do so. Nexen also requests a technical conference to consider such information. Protesters also renew their objections to the in-field transfer charge proposed in Docket No. RP09-428, and elimination of the charge absent ANR's showing that it is operationally justified.

14. The protesters do not believe ANR has provided adequate information to support its proposed Cold Springs 1 fuel and EPC charges, or operational information to support the application of such charges to in-field transfers between Cold Springs 1 and the other storage fields. Specifically, Indicated Shippers request that ANR be required to provide additional information regarding (1) whether and to what extent such in-field transfers occurred in 2009, (2) how such in-field transfers were treated, (3) the 2009 Cold Springs 1 in-field transfer fuel and EPC charge collections, (4) the 2010 Cold Springs 1 in-field transfer projections, and (5) whether the in-field transfer volumes were included in the 2010 projected Cold Springs 1 transactional throughput volumes.

15. In particular, Indicated Shippers assert that the increased Cold Springs 1 fuel and EPC charges in this docket result from unnecessary operational and accounting procedures which ANR believes are necessary to comply with the 2007 Order. They believe that the benefit of Cold Springs 1 to all of ANR's storage shippers can only be maximized if ANR operates Cold Springs 1 on an integrated basis with its other storage fields, even if there is a separate accounting of fuel and EPC costs. Accordingly, Indicated Shippers renew their request to reject an in-field transfer charge based on full Cold Springs 1 injection rates, and request recalculation of the proposed 2010 Cold Springs 1 fuel and EPC rates in accordance with the operational and accounting arguments made in Docket No. RP09-428.

16. SWE similarly notes the absence of information on whether ANR actually incurred costs for such in-field transfers, as well as operational information on how Cold Springs 1 may have been used to benefit ANR's system. SWE maintains that ANR must prove a direct correlation of withdrawals and injections in and out of Cold Springs 1 to such in-field transfers. According to SWE, such information includes how Cold Springs 1 was used with respect to ANR's other storage fields, who benefitted from the use of the facility, how many in-field transfers were charged fuel, how many actually resulted in the movement of gas, and how Cold Springs 1 customers' nominations into and out of Cold Springs 1 were performed. Nexen believes that a technical conference should be established to consider whether the incremental Cold Springs 1 fuel and EPC rate structure has any legitimacy in light of ANR's operational experience in 2009. Accordingly, Nexen requests that ANR be required to explain fully the operational basis

---

[9] An order in Docket No. RP09-428 was issued after the protests were filed.

for for every instance where ANR burned fuel or incurred EPC in operating Cold Springs 1.

17. The protests also describe the detrimental economic impact that the Cold Springs 1 fuel and EPC rate structure and the in-field transfer charge have had on their intended business use of Cold Springs 1. Nexen states that because the Cold Springs 1 incremental fuel and EPC charges are four times the levels originally projected, such charges have destroyed the economic value that was the basis of its decision to contract for Cold Springs 1 capacity. Nexen continues to assert that the charge for in-field transfers involving Cold Springs 1 is wholly unnecessary and has predictably resulted in making such transfers uneconomic. Noting that, among other things, such transfers perform an important role in the gas market for reacting to short-term balancing and market demands, and acting as an additional supply source, Nexen states it has not made such transfers since the charges were implemented. Nexen maintains that actual experience has confirmed the unjust and unreasonable nature of the charges, which it describes as in-place storage transfer charges.

18. As do the other protesters, Nexen also objects to the significant increase in the Cold Springs 1 EPC rate, charging that such increase gives a competitive advantage to rolled-in shippers over Cold Springs 1 shippers. Nexen argues that the known and measurable changes ANR has included in its proposed rates have not been adequately identified or supported. Nexen asserts that it is critical for ANR to identify and quantify each adjustment and its impact on the fuel and EPC rates projected to occur in 2010.

19. SWE raises similar economic concerns, and adds that the way ANR levies incremental Cold Springs 1 charges makes the Cold Springs 1 service an entirely different service than what SWE, as an anchor shipper in Cold Springs 1, was sold. SWE explains that along with ANR, it expected that ANR would be able to roll-in Cold Springs 1 with ANR’s other storage and thus provide identical service at identical rates. SWE states that after the Commission’s decision that Cold Springs 1 rates should be designed incrementally, SWE relied on ANR’s representation that the incremental EPC cost for Cold Springs 1 service would be nominal, and in the two to four cent range. Therefore, SWE states that it was willing to continue its subscription to the project. However, SWE points out that the incremental EPC charge of 19.9 cents per MMBtu proposed in this proceeding is five to ten times what ANR represented. SWE questions the likelihood that per kWh electricity costs have risen by that much in the last two to three years, if at all.

20. Furthermore according to SWE, ANR represented that the Cold Springs 1 service, like the rest of the storage service on its system, would be performed as part of an integrated storage complex, providing Cold Springs 1 shippers with the opportunity to make in-field transfers across the complex without additional charges. SWE states that it would not have contracted for Cold Springs 1 capacity without the expectation that Cold Springs 1 service would have such characteristics. SWE states that these changes in the

service have sapped its economic value, harmed the market, and raised the fee to up to nine times what ANR led Cold Springs 1 customers to believe it would be.

21. Finally, Nexen notes that with the exception of three discreet transportation hauls, ANR has proposed to increase its fuel rates on all transportation transactions. Nexen believes there is no apparent pattern to such increases, which range from minor to significant, nor have they been supported by ANR. Nexen requests that the basis for such increases be set for full examination at a technical conference.

22. On March 18, 2010, ANR filed an answer to the protests.[10] According to ANR, the protesters make essentially the same arguments concerning Cold Springs 1 fuel and EPC costs as they made in Docket No. RP09-428. Rather than repeating in detail its responses to such arguments in that proceeding, ANR summarizes its position as follows.

23. ANR states that the higher Cold Springs 1 fuel and EPC rates, as well as the in-field transfer charges, stem from the Commission's decision to require incremental treatment of the facility's fuel and EPC costs, and that existing storage shippers not subsidize such costs. ANR believes that from an economic perspective, current natural gas and electric rates would not support a showing that the benefits of Cold Springs 1 electric compression justify rolling-in such costs into the tracker. Nevertheless, ANR states its continued support of rolling-in such costs because of the efficiencies that result from operating its storage facilities on an integrated basis.

24. ANR reiterates that fuel must be charged for in-field transfers between Cold Springs 1 shippers and shippers in its rolled-in fields in order to properly assess charges for injections which inevitably must be made into Cold Springs 1, since ANR's fields are fully utilized. Moreover, ANR asserts that without such charges, other Cold Springs 1 shippers that do not utilize in-field transfers to fill their accounts, or rolled-in shippers will subsidize shippers that do utilize such in-field transfers.

25. ANR asserts that while the proposed $0.199 cent per Dth Cold Springs 1 EPC charge is a significant increase over the previous year's EPC charge of $0.1060 per Dth, last year's charge included a negative true-up of $0.0384 per Dth due to EPC over recoveries in the 2008 tracking period. ANR asserts that it would be more accurate to compare the increase using last year's EPC charge without the true-up, or $0.1444 per Dth.[11] ANR further states that the increase results in part from a significant reduction in

[10] Although generally not permitted, the Commission will accept the answer because it aids in the evaluation of ANR's filing. 18 C.F.R. § 385.213 (2009).

[11] According to Attachment 4, Page 1 of 3, ANR calculates a 2010 current EPC charge of $0.2090 per Dth, which decreases to $0.1909 per Dth charge after incorporation of a negative true-up of $0.0181.

the injection determinants used in the current EPC charge calculation (6 Bcf) versus roughly 11 Bcf used in the previous period's calculation. ANR explains that the previous period's determinants reflected its conservative estimate of the amount of Cold Springs 1 capacity that would be available for injections at the start of the injection season. ANR states that based on current inventory levels, it estimates that the field will cycle down to 57 percent or 8 Bcf by March 31, 2010. Thus, the current injection charges for Cold Springs 1 were designed using a 6 Bcf injection level. Finally, ANR states that it factored into its EPC calculations an anticipated rate increase from its electric power provider.

Discussion

26. The protests in this proceeding raise essentially the same issues as in Docket No. RP09-428. In the March 22, 2010 Order in that docket, the Commission expressed its concern that rejection of ANR's proposal to roll into its existing system-wide storage costs the fuel and electric power costs associated with the Cold Springs 1 facility may have led to various negative impacts, including the unintended consequence of interfering with ANR's ability to operate its storage assets as an integrated pool, and other inefficiencies. Therefore, the Commission directed ANR and all interested parties to file comments addressing the following, and any other relevant, issues: whether any inefficiencies or difficulties are being created due to the separate tracking of costs as mandated by the 2007 certificate order; whether it is appropriate to roll in the Cold Springs fuel and electric costs into the system rates; whether rolling in those costs would have any adverse rate impacts on existing shippers; and whether rolling in those costs would have system benefits. The order established a procedural schedule and stated that after reviewing the pleadings, the Commission would determine the appropriate course of action.

27. The Commission finds that ANR's current tracker filing and the protests thereto raise many of the same issues that were considered in Docket No. RP09-428, and which require further consideration in this docket based on ANR's operational experience in the 2009 tracking period. It is also unclear to what extent the transactional throughput underlying the currently proposed Cold Springs 1 fuel and EPC rates includes volumes associated with in-field transfers. Accordingly, in addition to reviewing the briefs that will be filed shortly in Docket No. RP09-428, the Commission intends to request additional information from ANR concerning the fuel and EPC rates proposed in this filing in order to determine whether the rates proposed in this filing are just and reasonable.

Suspension

28. Based on a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept

the tariff sheets for filing, and suspend their effectiveness for the period set forth below, subject to further conditions and orders.

29. The Commission's policy regarding rate suspensions is that rate 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 that it may be inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). 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. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (minimum suspension). The Commission finds that such circumstances exist here where ANR is filing its annual update pursuant to an approved fuel use and electric power cost tracker mechanism. Therefore, the Commission will accept and suspend the proposed tariff sheets to be effective April 1, 2010, subject to refund, conditions, and the outcome of any further orders in this proceeding and Docket No. RP09-428-000.

The Commission orders:

ANR's revised tariff sheets listed in footnote number 1 are accepted and suspended to be effective April 1, 2010, subject to refund, conditions, and further orders of the Commission in this proceeding and Docket No RP09-428-000.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.