

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,

ANR Pipeline Company

Docket No. RP99-301-076

ORDER ON COMPLIANCE FILING

(Issued March 25, 2004)

1. On May 9, 2003, ANR Pipeline Company (ANR) submitted a filing to comply with an April 30, 2003 Director's Letter Order (April 30 Order) in Docket No. RP99-301-074. The April 30 Order accepted an April 1, 2003 filing concerning ANR's negotiated rate agreement with Dynegy Marketing and Trade (Dynegy) and directed ANR to list the transaction as non-conforming. In its compliance filing, ANR requests the Commission to now reject the May 9 filing, stating that because of a subsequent tariff filing the Dynegy agreement is no longer non-conforming. For the reasons discussed below, the Commission will deny ANR's request to reject the May 9 filing and accept the filing as complying with our directives. This decision benefits the public because it accepts a filing that complies with the Commission's rules and regulations.

Background

2. On April 1, 2003, ANR submitted a negotiated rate agreement between ANR and Dynegy primarily to convert service from Rate Schedule ETS to Rate Schedule FTS-3. Among other things, ANR's agreement with Dynegy provided that, in return for the negotiated rates, Dynegy had agreed to forgo its rights under section 5 of Rate Schedule FTS-3. Section 5 of that rate schedule entitled "Variation of Deliveries" permits shippers to incur imbalances of up to 25 percent of the applicable contract demand. ANR requested temporary waiver of the requirement to list the Dynegy agreement as non-conforming because ANR stated that it was contemplating revising Rate Schedule FTS-3 to make certain of its features optional, including the enhanced balancing service. As a result, ANR stated that the agreement with Dynegy would no longer contain any material deviation. Therefore, ANR requested a temporary waiver of the Commission's requirement to list this agreement as a non-conforming agreement in its tariff. Finally, ANR stated that within 90 days it will either file to list the contract as non-conforming or explain in a broader filing why this contract will no longer be a material deviation.

3. The April 30 Order denied the request for waiver and directed ANR to file a tariff sheet listing the Dynegy agreement as non-conforming. The order stated that, currently, ANR's pro forma service agreement does not provide for a waiver of any unnecessary

part of the Rate Schedule FTS-3 service. Therefore, the order concluded that the Dynegy agreement contains a material deviation and must be referenced in ANR's tariff consistent with Section 154.112(b) of the Commission's regulations. If the Dynegy agreement becomes a conforming agreement in the future, the order provided that ANR can file to remove the agreement from its tariff. On May 9, 2003, ANR submitted a revised tariff sheet as directed by the April 30 Order (May 9 filing).

Discussion of Compliance Filing

4. In its May 9, 2003 compliance filing, in addition to revising its tariff to list the Dynegy agreement as non-conforming, ANR requested that the Commission reject the May 9 filing because of a filing it made on April 29, 2003 in Docket No. RP03-358-000 (April 29 filing). In that filing, ANR proposed changes to Rate Schedule FTS-3 that, among other things, would give shippers the ability to waive all rights under section 5. Therefore, ANR claimed the Dynegy agreement would no longer include a material deviation and it would be unnecessary to list the agreement as non-conforming.

5. In Docket No. RP03-358-000, the Commission rejected, without prejudice, ANR's April 29 filing in an order issued on May 30, 2003 (May 30 Order).¹ The Commission stated that it could not adequately review ANR's proposal to change its FTS-3 Rate Schedule because ANR failed to support its proposed changes as required by the Commission's regulations.² Therefore, because ANR's FTS-3 rate schedule has not been changed, the Commission denies ANR's instant request that we reject the May 9 filing. Instead, we will accept Twelfth Revised Sheet No. 190 which lists the Dynegy agreement in the tariff as a non-conforming agreement as required by our April 30 Order.

The Commission orders:

Twelfth Revised Sheet No. 190 which lists the Dynegy agreement in the tariff as a non-conforming agreement is accepted for inclusion in ANR's FERC Gas Tariff, Second Revised Volume No. 1, effective April 1, 2003.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

¹ ANR Pipeline Co., 103 FERC ¶61,261 (2003).

² Id. at 61,969-61,970.