

107 FERC ¶ 61,187
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ANR Pipeline Company

Docket No. RP04-264-000

ORDER ACCEPTING TARIFF SHEETS SUBJECT TO CONDITIONS

(Issued May 26, 2004)

1. On April 22, 2004, ANR Pipeline Company (ANR) filed revised tariff sheets¹ to add a new section 3.2 to the General Terms and Conditions (GT&C) of its tariff. That section would permit ANR to reserve capacity for future expansions on its system. The filing was protested. For the reasons set forth below, the revised tariff sheets are accepted effective June 1, 2004, subject to conditions. This order is in the public interest because it ensures that the subject tariff provisions conform to Commission requirements and policy.

I. Instant Filing

2. ANR contends that its proposed modifications provide a clear description of the circumstances under which ANR will reserve capacity for future projects and make interim capacity available on a limited basis up to the in-service date of a project. ANR asserts that, consistent with recent Commission orders,² the new provision allows ANR to reserve capacity that is unsubscribed or that is expiring or terminating in accordance with the requirements of section 22 of the GT&C of its tariff, the Right of First Refusal (ROFR), or that is under a service agreement that does not have a ROFR. In order to ensure that the capacity is not currently desired by existing shippers ANR proposes to first post the capacity for sale at least five days before reserving it for a project, and will

¹ First Revised Sheet No. 101B, Original Sheet Nos. 101C and 101D, Sixth Revised Sheet No. 102 and Second Revised Sheet No. 162.01 to FERC Gas Tariff, Second Revised Volume No. 1.

² See Northern Natural Gas Company, 105 FERC ¶ 61,057 (2003); Columbia Gulf Transmission Company, 100 FERC ¶ 61,136 (2002); and Tennessee Gas Pipeline Company, 86 FERC ¶ 61,066 (1999).

award the capacity pursuant to section 9 of the GT&C of its tariff. ANR states in its transmittal letter that it will reserve the capacity for a maximum of twelve months prior to its filing for certificate approval of the proposed project, and thereafter until the in-service date of the project. The tariff does not, however, appear to make this explicit. section 3.2 (4), Original Sheet No. 101D provides:

. . . . Transporter may only reserve capacity for an expansion project for which an open season has been held or will be held within one (1) year of the date that Transporter posts such capacity on its internet site under Informational Postings as being reserved.

ANR states that the reservation posting will include: (1) a description of the expansion project; (2) the total quantity of capacity to be reserved; (3) the location of the capacity on the pipeline system; (4) the estimated in-service date of the expansion project; (5) the anticipated timing of the open season for the expansion; and (6) on an ongoing basis, how much of the reserved capacity has been sold on a limited-term basis.

3. ANR is also revising section 22 of its GT&C to specify that the reserved capacity that will be available in the interim on a limited-term basis shall not be eligible for a ROFR, except in cases where ANR and the Shipper agree to a contractual ROFR contingent upon the cancellation of the proposed project for which the capacity was reserved.

4. ANR also proposes to revise section 3.2 (4), Original Sheet No. 101D by allowing ANR to make a non-binding solicitation for turnback capacity no later than 90 days after the close of the expansion project's open season. Finally, ANR states that should the project fail to go forward, ANR will post the reserved capacity that is not subject to a ROFR as generally available within thirty (30) days of making such a determination.

II. Notice, Interventions, Comments and Protests

5. Public notice of the filing was issued on April 27, 2004. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2004)), all timely filed motions to intervene and any motion 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. Comments requesting clarification were filed by the East Ohio Gas Company, d/b/a Dominion East Ohio (Dominion East Ohio)

and the Wisconsin Distributor Group (WDG). Protests were filed by WDG, the Process Gas Consumers Group (PGC) and the Indicated Shippers. The issues raised by the parties are discussed below.

6. Dominion East Ohio and WDG suggest clarifying language to the procedures that ANR must follow before it may reserve capacity for an expansion project. WDG states that it has communicated its comments to ANR and that ANR has agreed to incorporate into its tariff language WDG's suggestions to clarify the capacity reservation process.³ Dominion East Ohio filed supplemental comments supporting WDG's proposed changes to ANR's procedures with a single exception relating to the time period for posting the capacity that ANR desires to reserve. Dominion East Ohio suggests that consistent with Commission policy the posting period should be at least five *business* days.⁴ PGC also argues that the appropriate timeframe should be five business days.

7. With regard to ANR's proposed tariff language permitting the reservation of capacity for an expansion project for which an open season has been held or will be held within one (1) year of the date that ANR posts such capacity, the Indicated Shippers and WDG argue that ANR links the timing of its reservation of capacity only to the open season for the expansion but not to its filing of a certificate application for the expansion. Both the Indicated Shippers and WDG contend that ANR should be required to add language stating that ANR may only reserve capacity for the twelve months prior to ANR filing an application for certificate approval for the construction of the expansion facilities, consistent with Commission policy.⁵ Further, the Indicated Shippers state that the Commission required pipelines to post the reserved capacity as generally available capacity if the pipeline does not file an application within one year of its reservation of capacity.⁶

8. PGC asserts that ANR proposes to make a non-binding solicitation for turnback capacity no later than 90 days after the close of the expansion project's open season.

³ See WDG's Protest at 2-3 (setting forth proposed tariff language).

⁴ Citing Northern Natural Gas Company, 105 FERC ¶ 61,057 at P 13 (2003).

⁵ Citing Northern Natural Gas Company, 105 FERC ¶ 61,057 at P 18 (2003) and Midwestern Gas Transmission Company, 106 FERC ¶ 61,229 at P 11 (2004).

⁶ Citing Columbia Gas Transmission Corporation, 100 FERC ¶ 61,136 at P 11 (2002).

PGC argues that the proposed language does not provide a timeframe for responding to the solicitation, and PGC suggests that including a timeframe would provide necessary certainty to shippers. PGC states that the Commission has approved similar language in previous proceedings.⁷

III. Discussion

9. ANR's revised tariff sheets are accepted to become effective June 1, 2004, subject to conditions. ANR's proposal to reserve capacity for future expansion projects is generally consistent with Commission policy. The Commission has previously found that the reservation of capacity related to future expansions will minimize facility construction and associated environmental impacts, will encourage fuller utilization of capacity, and will minimize the rate impact of allocating costs of unsubscribed capacity to existing customers once the pipeline completes the expansion.

A. Language Clarifying the Reservation of Capacity Process

10. WDG asserts that ANR has agreed to its suggestions to clarify the tariff language governing ANR's capacity reservation process. Specifically, WDG suggests that we direct ANR to make a compliance filing to reflect WDG's proposed changes to section 3.2 on Original Sheet Nos. 101C and 101D which merely clarify the procedures that ANR must follow before it may reserve capacity for an expansion project. Dominion East Ohio agrees with WDG's suggestions, with the exception below.

11. Specifically, Dominion East Ohio and PGC request that the posting period for reserved capacity to be at least five *business days*, as opposed to five days. Dominion East Ohio argues that the five business day period is consistent with the Commission's decision in Northern Natural Gas Company.⁸ We accept the clarifying language governing ANR's capacity reservation process, as modified to reflect WDG's suggested changes. We also agree with Dominion East Ohio and PGC that the posting period should be for at least five business days, consistent with our policy. Therefore, we direct ANR to file revised tariff sheets incorporating the above clarifications.

⁷ Citing Midwestern Gas (approving Tariff Sheet No. 275) which stated that the turnback solicitation will specify "the minimum term for a response to the solicitation"; and Northern Border Pipeline Company, 105 FERC ¶ 61,228 (2003) (approving Tariff Sheet No. 272A containing same language).

⁸ See Northern Natural Gas Company, 105 FERC ¶61,057 (2003) at P 13.

B. Time Limit on Capacity Reservations

12. Indicated Shippers and WDG request the Commission to require ANR to add language to its tariff stating that ANR may only reserve capacity for the twelve months prior to ANR filing an application for certificate approval for the construction of the expansion facilities. We agree. Although ANR states in its transmittal letter that it proposes such a provision, the tariff language does not explicitly provide for this. Our policy is that capacity may be reserved for only a 12-month period prior to a pipeline filing for certificate approval, and the pipeline may only reserve capacity for which an open season for the expansion has been or will be held within one year of the posting of such capacity as reserved. These requirements assure that the reservation of capacity occurs only as part of a realistic expansion plan, while giving the pipeline some flexibility as to the timing of the open season. Therefore, we direct ANR to file revised tariff sheets clarifying that capacity may only be reserved for the twelve months prior to ANR filing an application for certificate approval for the construction of the expansion facilities. Further, under section 3.2, if the expansion project does not go forward, ANR would have to post capacity as generally available.

C. Timing of Solicitation of Turnback Capacity

13. PGC asserts ANR's proposal to make a non-binding solicitation for turnback capacity no later than 90 days after the close of the expansion project's open season does not provide a timeframe for responding to the solicitation. PGC argues that including a timeframe provides necessary certainty to shippers. The Commission has held that pipelines must solicit turnback capacity either before or contemporaneously with the open season in order to effectuate our policy that turnback capacity be utilized as much as possible in sizing expansion projects. Offers to turnback capacity are more likely to be factored into a determination of the size of the project if the solicitation is close in time to the open season, since that is when the size of an expansion project is being assessed. ANR's proposed option of soliciting turnback capacity in its expansion open season complies with this policy. However, ANR's proposal to make a non-binding solicitation for turnback capacity no later than 90 days after the close of the expansion project's open season does not provide a timeframe for responding to the solicitation. ANR is directed to file revised tariff language that provides a timeframe including the minimum term for responding to the solicitation.

The Commission orders:

(A) ANR's revised tariff sheets listed in footnote no. 1 of this order are accepted to become effective June 1, 2004, subject to the conditions set forth in the body of this order and the ordering paragraph below.

(B) ANR is directed to file, within 30 days of the date this order issues, revised tariff sheets consistent with the discussion in the body of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Magalie R. Salas,
Secretary.