

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 Nos. RP04-435-001
RP04-435-002

ORDER ON CLARIFICATION, REHEARING, AND COMPLIANCE FILING
AND DENYING A STAY

(Issued December 22, 2004)

1. On September 30, 2004, the Commission accepted and suspended, subject to conditions and a hearing, a filing under section 4 of the Natural Gas Act (NGA) by ANR Pipeline Company (ANR) to establish certain gas quality specifications.¹ Two parties requested rehearing and one party requested a stay of the September 30 Order. In addition, on October 15, 2004, ANR made a filing in compliance with the September 30 order. The Commission denies rehearing, denies the motion for stay, and accepts the compliance filing, as explained below. This order benefits the public because it assists in improving the quality of natural gas and the operations of gas pipelines.

Background

2. On August 2, 2004, ANR filed revised tariff sheets proposing Hydrocarbon Dewpoint (HDP)² gas quality specifications pursuant to section 4 of the NGA to be effective October 1, 2004. Among other things, ANR proposed tariff language that would authorize it to establish and post on its internet site a limit on HDP for receipts.

¹ *ANR Pipeline Co.*, 108 FERC ¶ 61,323 (September 30, 2004) (September 30th Order).

² The HDP is the temperature at which gas flow begins to change from a single gaseous phase to a dual gas and liquid phase in the gas stream.

That limit would be on specified segments or other specified locations on ANR's system. ANR stated that the purpose of the HDP limit is to prevent hydrocarbon fallout and to assure that gas will be accepted for delivery to interconnects, including with interstate or interstate pipelines, end-users, local distribution companies and others. The proposal stated that ANR would attempt to provide such notice at least ten days before the effective date of the limitation, and that the notice would include the duration of the limit. ANR provided that, if it posted an HDP limit at a point, it would post the actual HDP level at that point on its internet website. ANR also proposed an HDP safe harbor of 15 degrees Fahrenheit, guaranteeing that under no circumstances would gas with an HDP less than or equal to that level be refused. ANR filed a motion to place its proposal into effect on October 1, 2004, but reserved the right not to place the proposal into effect until a later date.

3. On September 30, 2004, the Commission accepted and suspended ANR's proposal effective October 1, 2004, subject to conditions and hearing. The Commission found that the issues raised by protesters concerning the 15 degree HDP safe harbor are issues of fact that are best resolved in a hearing. The Commission recognized that there is currently an ongoing proceeding in Docket No. PL04-3-000 where the issue of generally applicable standards concerning gas quality and merchantability is being discussed. The Commission accordingly stated that it would not set any issues concerning gas merchantability for hearing in the instant proceeding and would determine in a separate proceeding the applicability to ANR of any such generally applicable standards that might be approved by the Commission. The Commission also noted that ANR had not stated what criteria it will use for determining which points will be subject to an HDP limit posting. The Commission found that ANR's criteria and methodologies should be examined at the hearing. However, during the interim, the Commission required ANR to file revised tariff language that provides ANR will post the dewpoint data required in *Natural I*.³ This required ANR to post, within 24 hours, every receipt point dewpoint

³ Natural Gas Pipeline Company of America, 102 FERC ¶ 61,234 at P 48 (2003) (*Natural I*):

[W]e shall require Natural to file revised tariff provisions that provide that it shall post, on its Internet website: (1) every receipt point dewpoint value Natural calculates, within 24 hours of such calculation, along with the method by which the dewpoint was calculated; and (2) every blended dewpoint and blended Btu value Natural calculates for a line segment of its system, within 24 hours of such calculation. This, coupled with the GT&C section 26.1(h) procedures, and the shipper's ability to question Natural about the flow path of the shipper's volumes, should

(continued)

value that it calculates, along with the method of calculation, and every blended dewpoint and blended Btu value it calculates for a line segment. The Commission also noted that, because it had conditioned the acceptance of ANR's proposal, pursuant to the reservations of ANR's motion to place the tariff sheets into effect, ANR must file a motion pursuant to section 154.206(b) of the Commission's regulations.⁴

Rehearing Requests

A. What Data Must ANR Provide?

4. ANR requests clarification or rehearing of two matters. First, ANR asserts the data requirements in *Natural I* should not be applied unmodified to ANR's system. ANR asserts it did not state it was willing to supply the *Natural I* data. ANR seeks clarification that the Commission intended to require ANR to provide the relevant data consistent with *Natural I*, but tailored to ANR's system and in a different format. ANR states that the provisions in its compliance filing reflect ANR's understanding of what the Commission is requiring. ANR seeks rehearing if the Commission strictly applies the *Natural I* requirements to ANR on the ground that the Commission made no determination regarding the appropriateness of applying these provisions to ANR.

5. The Commission denies these requests. ANR proposes, in the absence of a posted receipt point HDP limit, to limit the HDP information it will regularly post to three points of its own choosing within the Southeast, Southwest and Mainline Areas, regardless of

enable Natural's shippers to assess whether Natural's basis for imposing a more stringent quality restriction on a given shipper is reasonable, whether the reason is operational in nature or to maintain Natural's ability to deliver gas into interconnecting downstream pipelines, and whether there is any basis for asserting, in a complaint filed with the Commission, that Natural has imposed a quality restriction to the shippers at certain receipt points who are tendering rich, non-conforming gas to Natural, while the same quality restriction is not being applied to shippers at other receipt points along the same line segment who are also tendering rich, non-conforming gas to Natural.

⁴ 108 FERC 61,323 at P 28.

whether it calculates dewpoints for other receipt points or line segments. In addition, when it posts a receipt point HDP limit, ANR proposes to post the calculated HDP and the method used for that receipt point.⁵

6. ANR's proposal, like the proposal at issue in *Natural I*, gives the pipeline the flexibility to post HDP limits at some receipt points and not others, and the posted HDP limits could vary from receipt point to receipt point. In *Natural I*, the Commission responded to concerns that the pipeline might use the flexibility in an unduly discriminatory manner, in part, by relying on the shippers' ability to utilize the Commission's complaint process. Accordingly, to facilitate the ability of the shippers to monitor the pipeline's actions, the Commission required the pipeline to post every receipt point and line segment dewpoint value it calculates. The Commission stated that this would, for example, enable shippers to assess the reasonableness of the pipeline's actions in refusing to accept rich non-conforming gas at one receipt point, but not another.⁶ ANR has provided no explanation why shippers on its system have any less need for the information in question in order to monitor its actions in posting different HDP levels at different points, than the shippers in *Natural I*.

7. The Commission therefore finds that ANR's shippers have a legitimate need for information about dewpoint values on other areas of the system than the limited locations for which ANR proposes to post data in order to assess whether ANR is exercising its flexibility to post different HDP limits at different points in a not unduly discriminatory manner. ANR stated in its filing that its proposal was required to protect the operational integrity and reliability of its system,⁷ not just of the receipt points for which it proposes to impose HDP limits.⁸ Further, ANR states that, in establishing its proposed HDP safe harbor level, it took into consideration the ambient temperature and pressure drops at its delivery points.⁹ Again, these are considerations and data far removed from the receipt points at which ANR's proposal would authorize it to impose HDP limitations.

⁵ Proposed section 13.2(a) of ANR's General Terms and Conditions.

⁶ 102 FERC ¶ 61,234 at P 33 (2003).

⁷ ANR's Docket No. RP04-435-000 transmittal letter at 2-3.

⁸ ANR's Exhibit K shows that delivery area HDP of gas in its system has varied from -20 to over 40 degrees Fahrenheit over a four month period in 2001-2002.

⁹ ANR's Docket No. RP04-435-000 transmittal letter at 5-7, and Exhibits F through H.

Suppliers, the pipeline, distributors and end users have expressed a need for this data for reasons of access, operations and applicability. The suppliers of gas are concerned about access to transportation capacity.¹⁰ Some of the local distribution companies are concerned that delivered gas will have an HDP level in excess of their preferred level.¹¹ And some end users are concerned with matching their appliance specifications with the actual HDP level of delivered gas.¹² These are requirements for data beyond the segments where ANR wishes to control liquefiable inputs. Customers' need for information is separate from ANR's requirements. Their requirements go to the quality of the gas they deliver into ANR's system, the quality of the gas that they receive and when the quality of the gas will vary. ANR's own proposed tariff recognizes its customers' interest in the HDP level of the gas they receive:

Transporter may, from time to time, as operationally necessary, establish and post on its internet site a limit on Hydrocarbon Dewpoint for receipts on specified segments or other specified locations on its system to prevent hydrocarbon fallout, consistent with this Section, *or to assure that gas will be accepted for delivery into interconnects, including with interstate or intrastate pipelines, end-users, local distribution companies and others.*¹³

In the situation where the gas quality can significantly vary, where the data are deemed by the customers important for their purposes, and as the owners of the commodity ANR is transporting, the customers have the right to have this information if and where available.

8. The Commission clarifies that parties in the hearing can examine whether the *Natural I* reporting requirements should be fine tuned to reflect ANR's system and customer needs.

¹⁰ See 108 FERC 61,323 at P 15-16.

¹¹ Note the protest of East Ohio Gas Company, d/b/a Dominion East Ohio, 108 FERC 61,323 at P 14.

¹² Note the protest of Process Gas Consumers Group (PGC), 108 FERC 61,323 at P 13.

¹³ ANR's FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 130, section 13.2(a) of the General Terms and Conditions. (Emphasis added.)

B. Should There Be 30 Days' Notice of a Change in HDP and Should the Maximum HDP Be 25 Degrees Fahrenheit?

9. In its rehearing request, Process Gas Consumers (PGC) asks the Commission to require ANR to provide at least 30 days' notice of a change in the HDP level and to establish a maximum HDP limit of 25 degrees Fahrenheit.¹⁴ PGC asserts that the HDP level is crucial to the operation of industrial customers' equipment and that they need 30 days to recalibrate equipment when there is a change in HDP level and to ensure that the revised level is compatible with their equipment in order to prevent malfunctions and hazards. PGC asserts a maximum HDP limit of 25 degrees Fahrenheit is necessary to provide certainty and reliability. It asserts that above 25 degrees Fahrenheit there may be a pressure drop between the pipeline delivery pressure and a facility's operating line pressure which would cause a temperature drop and result in liquid fall out. It also asserts that much of the industrial equipment in use has not been tested for gas with high levels of hydrocarbons.

10. The Commission denies these rehearing requests. These are factual issues that should be determined at the hearing. Nonetheless, as discussed below, ANR must post what HDP information it does have within 24 hours. Customers may be able to utilize this information for their purposes pending resolution of the HDP, notice and information issues set for hearing.

C. Should There Be a Hearing and Should the Proceeding Be Held in Abeyance?

11. In its rehearing request, ANR asserts the Commission provided no rational basis for the decision to establish a hearing. ANR asserts the Commission failed to review, analyze, or discuss the support provided by ANR to justify its proposal. ANR asserts the Commission accepted the assertions of the intervenors opposed to the proposal and ignored the comments in favor of the proposal. It also asserts that a hearing is a waste of the parties' time and resources because there is nothing to indicate that a hearing would result in a more correct HPD safe harbor level and it ignores the industry efforts to reach nationwide standards for gas quality. ANR asserts that the Natural Gas Council drafted a document entitled "White Paper on Liquid Hydrocarbon Dropout in Natural Gas Infrastructure" at the end of July, 2004 and will complete its work by the end of 2004 with an industry consensus document regarding liquid fallout. ANR believes that its proposal is consistent with the white paper. ANR asserts that the Commission is likely to impose the industry wide solution on ANR once it is adopted, so that a hearing would be

¹⁴ PGC supports the safe harbor HDP limit of 15 degrees Fahrenheit.

pointless. It also asserts that a settlement in the instant proceeding would do great harm to the industry effort. Thus, ANR asserts that setting the proposal for hearing was arbitrary and capricious. If the Commission does not grant rehearing of this request, then ANR asks the Commission to hold the hearing in abeyance pending the outcome of the industry proceeding.

12. PGC also asserts that the industry is considering both gas quality and gas interchangeability issues under the auspices of the Natural Gas Council. It, too, points to the white paper. PGC also urges the Commission to hold this proceeding in abeyance and suspend the procedural schedule in the hearing, specifically until the Commission receives the Natural Gas Council report that the industry has reached consensus on gas quality issues, including the ones in this filing, or that it is unable to reach a uniform opinion on gas quality issues or until the Commission itself issues a decision regarding gas quality issues in Docket No. PL04-3-000. PGC asserts ANR has said it would not oppose a Commission order to hold the proceeding in abeyance as long as ANR could continue to post Operational Flow Orders in the interim to protect its system¹⁵ and that monthly Operational Flow Orders could meet operational concerns on ANR.

13. Indicated Shippers¹⁶ and the Producer Coalition¹⁷ filed motions for leave to answer and answers to PGC's motion for stay. The Commission grants the motions as timely answers to motions are permitted.¹⁸ These parties assert that the NGC report will not determine the specific factual matters at issue in this proceeding and that, in any event, the procedural schedule has already been modified to take into account the expected

¹⁵ PGC cites Motion for leave to File Answer and Answer of ANR Pipeline Company, at footnote 33, Docket No. RP04-435-000 (September 3, 2004).

¹⁶ Here, Indicated Shippers consists of three of the companies that intervened under this name, ChevronTexaco Natural Gas, a division of Chevron U.S.A. Inc., ConocoPhillips Company, and Shell Offshore Inc. and two additional companies that intervened in their own names, BP America Production Company and BP Energy Company.

¹⁷ The Producer Coalition consists of the same companies that intervened in this proceeding under that name: Devon Energy Corporation, Dominion Exploration & Production, Inc., Forest Oil Corporation, The Houston Exploration Company, Kerr-McGee Oil & Gas Corporation, Newfield Exploration Company, Spinnaker Exploration Company, and TOTAL E&P U.S.A., INC.

¹⁸ 18 C.F.R. § 385.213(a) and (d) (2004).

issuance of this report on December 17, 2004, by providing for the filing of data requests from December 15, 2004 through February 1, 2005. They assert that PGC has not shown it will be irreparably harmed if the proceeding is not stayed. The Producer Coalition asserts that a stay would substantially harm its members because issues concerning HDP postings must be resolved so that the new tariff is implemented in a nondiscriminatory, just and reasonable manner.

14. The Commission denies ANR's request to accept its proposal without a hearing. ANR's proposal received many protests.¹⁹ Intervenors protested the lack of information on the safe harbor HDP, the type and currency of data used for HDP calculations, the necessity of considering Btu content together with HDP levels, the need for a maximum HDP level, the amount of notice needed for changes in HDP level, the need for monitoring points, the lack of criteria for determining which points will be subject to HDP limits, and the kind of information to be provided to shippers concerning HDP limits. These are disputed factual issues that are best determined in a hearing where intervenors may conduct cross-examination and present their own evidence. These hearing procedures will create a more complete and balanced record on which these issues can be determined.

15. The Commission also declines to hold this proceeding in abeyance and suspend the procedural schedule of the hearing. In an order issued December 30, 2003, the Commission found that ANR must address demonstrated liquids problems through a tariff filing rather than through Operational Flow Orders.²⁰ The Commission welcomes the industry process being conducted by the Natural Gas Council and looks forward to positive results from that process. However, in the meantime, ANR must conduct operations. ANR contends that ANR must have HDP gas quality standards in place in its Tariff to safely and prudently operate its system. ANR has made a filing for such standards in this proceeding which the Commission accepted subject to modifications. ANR has since made a compliance filing to its initial filing and a motion to place its filing, as modified by the compliance filing, into effect. The Commission rules on the compliance filing and the motion below. Consequently, the HDP provisions remain conditionally accepted and remain subject to a final determination as to whether the provisions are just and reasonable until either withdrawn, changed through a section 4 filing by ANR or by action of the Commission under section 5 of the Natural Gas Act.

¹⁹ September 30 Order at P 13-16.

²⁰ *Indicated Shippers v. Trunkline Gas Company and Indicated Shippers v. ANR Pipeline Company*, 105 FERC ¶ 61,394 at P 26 (2003) (December 30 Order).

16. As the Commission has previously held, ANR may not use Operational Flow Orders to establish gas quality standards. In the December 30 Order, the Commission found that ANR's use of monthly Operational Flow Orders to establish a gas quality standard, the Btu level, was contrary to section 4(d) of the Natural Gas Act because it changed ANR's gas quality standards without giving notice and making a filing with the Commission.²¹ The Commission also found that using monthly Operational Flow Orders to change the Btu level was a misuse of Operational Flow Orders because, among other things, they are intended to address the flow of gas and to be used for temporary and transient emergency situations.²² In addition, the Commission found that using monthly Operational Flow Orders to change the Btu level was contrary to Order No. 637 because that order sought to minimize the use of Operational Flow Orders and of penalties.²³ The use of Operational Flow Orders to establish an HDP level, another gas quality standard, would also be contrary to section 4(d) of the Natural Gas Act, a misuse of Operational Flow Orders, and contrary to Order No. 637.

D. Should The Tariff Be Stayed?

17. In the event the Commission does not hold this proceeding in abeyance and suspend the procedural schedule in the hearing, PGC moves for a stay of the effectiveness of ANR's proposed tariff changes. It asserts justice requires a stay of ANR's proposed tariff provisions because it will be irreparably injured by fluctuating HDP levels of which it has only ten days' notice and by an HDP greater than 25 degrees Fahrenheit. In these events, it asserts its members will suffer damage to equipment, loss of production, and possible injury to personnel. PGC also asserts issuance of a stay would not substantially harm other parties because ANR can issue monthly OFOs to make sure that gas is processed and the liquid hydrocarbons removed. PGC asserts that, in any event, the owners and operators of the processing plants have indicated that they would process gas absent an OFO in November, 2004. PGC also asserts that a stay will benefit the public interest by ensuring that the industry process being conducted through the Natural Gas Council is allowed to reach a resolution and that the Commission may issue a decision in Docket No. PL04-3-000. PGC asserts it thus meets the requirements for a stay²⁴ and asks for a stay until the Commission receives the Natural Gas Council's

²¹ December 30 Order at P 16-17.

²² *Id.* at P 18.

²³ *Id.* at P 21-22.

²⁴ PGC cites *Revised Public Utility Filing Requirements*, 100 FERC ¶ 61,074 at P 30 (2002): "in deciding whether justice . . . requires [the grant of a stay], the Commission
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report that either it has reached a consensus or that it is unable to reach a uniform opinion on gas quality issues, including those raised in the instant ANR filing, or until the Commission itself issues a decision regarding gas quality issues.

18. The Commission denies PGC's motion for stay of ANR's proposed tariff provisions. The Commission notes first that it has no authority to stay the effectiveness of a proposed tariff provision beyond five months from the requested effective date.²⁵ Therefore, the Commission could not grant an indefinite stay, as PGC has requested. In any case, for the reasons given below, the Commission declines to grant a stay of the proposed tariff provisions of any duration.

19. Under the Administrative Procedure Act, the Commission may grant a stay when justice so requires.²⁶ In deciding whether to grant a stay, the Commission has in some cases considered factors such as whether the moving party would be irreparably harmed absent a stay, whether other parties will be harmed if a stay is granted, and whether granting the stay is in the public interest.²⁷ In this case, the Commission finds justice does not require granting a stay.

20. PGC claims it will be irreparably harmed if it has only ten days' notice of a change in HDP level or if the HDP level is greater than 25 degrees Fahrenheit. The harm will consist of damage to equipment, loss of production, and possible personal injury. The Commission notes harm could occur under ANR's existing tariff from fluctuations in HDP levels since under ANR's existing tariff, no notice at all is required of changes in HDP level and there is no mechanism for addressing changes in HDP level. The

considers various factors, including whether: (1) the moving party will suffer irreparable injury absent a stay; (2) issuance of a stay would substantially harm other parties; and (3) issuance of a stay is in the public interest." (citations omitted).

²⁵ Section 4(e) of the Natural Gas Act; 15 U.S.C. 717c(e).

²⁶ 5 U.S.C. § 705.

²⁷ *California Independent System Operator Corp.*, 105 FERC ¶ 61,181 at P 5 (2003); *Blumenthal v. NRG Power Marketing, Inc.*, 104 FERC ¶ 61,046 at P 7-9, 11-14 (2003).

proposed tariff provisions provide PGC with some notice of changes and with a conditionally accepted mechanism for the pipeline to address problems that arise when the HDP level changes.²⁸

21. In any event, the Commission finds that the harm alleged by PGC is speculative. ANR's proposed tariff language states that it "will provide as much notice of [an HDP] limitation as reasonably practicable and will attempt to provide such notice at least ten (10) days prior to the effective date of the limitation."²⁹ ANR is committed under its tariff to provide as much notice "as is reasonably practicable." Thus, the Commission expects ANR will make every effort to inform shippers as soon as it can of changes in HDP level. In addition, the Commission believes ANR is unlikely to raise its HDP over 25 degrees Fahrenheit. In its August 2, 2004 filing ANR stated that its facilities and those located at transfer points between ANR and its customers were designed and constructed on the assumption that system HDP levels would not change drastically.³⁰ Historically, ANR stated, its customers have received gas with an HDP level less than or equal to 15 degrees Fahrenheit.³¹ In addition, ANR chose a safe harbor HDP of 15 degrees Fahrenheit. In light of these considerations, it appears ANR would not raise the HDP level over 25 degrees Fahrenheit as such a higher level is substantially above historical levels, presents opportunity for more liquid fallout than that for which its

²⁸ The Commission also notes that PGC's claim of irreparable harm from the proposed provisions is contradicted by its primary request that the Commission suspend the hearing without staying the proposed tariff provisions. In that event, the notice period would continue to be ten days and there would be no resolution of whether the maximum HDP level should be 25 degrees Fahrenheit.

²⁹ ANR's FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 130, Filing of August 2, 2004, Docket No. RP04-435-000.

³⁰ Letter of August 2, 2004 at page 7, Docket No. RP04-435-000.

³¹ *Id.* at page 6.

system was designed, and would have adverse affects pipeline operations. In any event, claims of economic harm, in and of themselves, do not constitute irreparable harm³² and thus would not be grounds for granting a stay.

22. If a party is unable to demonstrate that it will suffer irreparable harm absent a stay, the Commission need not examine other factors.³³ Nonetheless, the Commission notes that other shippers and the pipeline would be substantially harmed if it issued a stay because ANR may not use monthly Operational Flow Orders to set HDP limits on its system, for the reasons discussed above. Finally, the Commission finds that a stay is not in the public interest because it is not needed for the industry process under the Natural Gas Council to continue and the Commission will consider the results of that process and apply them to this proceeding if necessary.³⁴

Compliance Filing

23. ANR filed a tariff sheet³⁵ in compliance with the September 30th Order. The September 30th Order required ANR to file revised tariff provisions that provide that it shall post, on its Internet website: (1) every receipt point dewpoint value ANR calculates, within 24 hours of such calculation, along with the method by which the dewpoint was calculated; and (2) every blended dewpoint and blended Btu value ANR calculates for a line segment of its system, within 24 hours of such calculation.³⁶

³² *Blumenthal*, 104 FERC ¶ 61,046 at P 9 (2003) (citing *Samson v. Murray*, 415 U.S. 61, 90 (1974), which quoted *Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n*, 259 F.2d 921,925 (D.C. Cir. 1958)); *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) ("It is also well settled that economic loss does not, in and of itself, constitute irreparable harm.").

³³ *CMS Midland, Inc., Midland Cogeneration Venture Ltd. P'ship*, 56 FERC ¶ 61,177 at 61,631 (1991), *aff'd sub nom. Michigan Municipal Coop. Group v. FERC*, 990 F.2d 1377 (D.C. Cir.), *cert. denied*, 510 U.S. 990 (1993).

³⁴ September 30 Order at P 21.

³⁵ Substitute First Revised Sheet No. 130.01 to ANR's FERC Gas Tariff, Second Revised Volume No. 1.

³⁶ 108 FERC ¶ 61,323 at P 23.

24. ANR states that its proposed tariff language will provide daily HDP postings for three points on its system. ANR states that such postings would provide HDP data that is representative of the HDP level for flowing gas on its system. Without explanation, ANR did not propose to identify the method by which it calculated its HDP.

25. ANR proposed an effective date of November 1, 2004 for the tariff sheets included in its compliance filing. In addition, ANR included in its compliance filing a motion to place the tariff sheets it filed on August 2, 2004 which were approved by the September 30 order into effect October 1, 2004.

A. Protests and Comments

26. Public notice of the filing was issued on October 20, 2004. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2004)). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2004), all timely motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. The Indicated Shippers³⁷ filed a protest, and the Process Gas Consumers Group filed comments. The protest and comment are discussed below.

B. Discussion

27. The September 30th Order required ANR to file revised tariff provisions that provide that it shall post, on its Internet website: (1) every receipt point dewpoint value ANR calculates, within 24 hours of such calculation, along with the method by which the dewpoint was calculated; and (2) every blended dewpoint and blended Btu value ANR calculates for a line segment of its system, within 24 hours of such calculation.³⁸ ANR states that its proposed tariff language will provide daily HDP postings for three points on its system. ANR states that such postings would provide HDP data that is representative of the HDP level for flowing gas on its system. Without explanation, ANR did not propose to identify the method by which it calculated its HDP.

28. The Indicated Shippers protests that ANR's compliance filing is incomplete. The Indicated Shippers believes that the Commission's September 30th Order required ANR to post every receipt point HDP within 24 hours of the calculation along with the method by which it was calculated.

³⁷ Indicated Shippers consist of Chevron Texaco Natural Gas, a division of Chevron U.S.A. Inc., ConocoPhillips Company, and Shell Offshore, Inc.

³⁸ 108 FERC ¶ 61,323 at P 23.

29. The Commission, above, rejected ANR's request for rehearing that would have permitted it to supply less information than what the Commission required. ANR's compliance filing does not comply with the September 30th Order. The Commission therefore accepts the revised tariff sheet filed by ANR, subject to the condition that ANR file revised tariff language consistent with the September 30th Order within 15 days of the date of this order.

30. As described above, the September 30th order accepted ANR's filing to revise its gas quality tariff provisions to be effective October 1, 2004, but made clear that ANR would have to file a motion to place the five tariff sheets included in its filing into effect since the Commission's acceptance of the tariff sheets was conditional. ANR included in its October 15, 2004 compliance filing a motion to place the tariff sheets "approved by the [September 30th] Order" into effect on October 1, 2004. At the same time, ANR requested a November 1, 2004 effective date for the one revised tariff sheet included in its compliance filing. That tariff sheet not only contained the provisions for posting HDP data which the September 30th order required to be changed, but also the provision for a 15 degree HDP safe harbor. ANR thus apparently seeks: (1) an October 1, 2004 effective date for all aspects of its original proposal set forth on the four proposed tariff sheets not changed by ANR's compliance filing, including the authorization for it to post limits on acceptable HDP levels applicable to specific segments or other locations, but (2) a November 1 effective date for the 15 degree HDP safe harbor provision and the requirement to post its calculations of HDP levels set forth in the revised tariff sheet included in the compliance filing.

31. The Commission accepts ANR's requested November 1, 2004 effective date for the revised tariff sheet, but denies ANR's motion to place the four unchanged tariff sheets into effect on October 1, 2004.

32. The Commission denies the motion to place the four unchanged tariff sheets into effect on October 1, 2004 for two reasons. First, ANR filed the motion on October 15, 2004, and thus is seeking to move those tariff sheets into effect retroactively. While the September 30th order accepted ANR's filing in this case to be effective October 1, the Commission specifically noted that ANR had conditioned its motion to place the tariff sheets into effect in the event of a minimal suspension on approval of the proposal without change. As the ANR's condition was not satisfied, the Commission noted that ANR had to file another motion if it chose to move the suspended tariff into effect. Such a motion could only put the filing into effect prospectively from the date the new motion

was filed.³⁹ Permitting a pipeline to motion its tariff sheets into effect retroactively would violate the underlying purpose of NGA section 4 of giving shippers notice of the tariff provisions governing their service.⁴⁰ It is discretionary with the pipeline whether and when to file such a motion. Therefore, the customers cannot know the effective date chosen by the pipeline until it files the motion.

33. Second, ANR's request for different effective dates for different parts of its proposal would improperly change its proposal during the interim period when only part of the proposal is in effect. A pipeline's motion to move suspended tariff sheets into effect is intended to be a ministerial matter, which the pipeline can accomplish as a matter of right without Commission action. However, this presumes that the pipeline moves into effect the proposal that the Commission reviewed in its suspension order.

³⁹ Section 4(e) of the Natural Gas Act of 1938 provides that suspended tariff may go into effect "upon motion of the natural gas company...." This language is reflected at 154.206(b) of the Commission's regulations. 18 C.F.R. 154.206(b) (2004).

⁴⁰ *Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs Final Rule; Order on Rehearing*, Order No. 582-A, FERC Statutes and Regulations, Regulation Preambles, 1991-1996, ¶ 31,034 at 31,561 (1996):

... ANR and CIG ask whether it was the Commission's intent that, where the pipeline had reserved its right to file a later motion, the pipeline would lose a day or several days before rates were effective. If so, ANR and CIG request clarification and rehearing.

The request for rehearing is denied. A suspended rate may not go into effect prior to the motion of the pipeline. The procedures for motioning rates into effect after suspension are the same regardless of the length of the suspension period. NGA section 4(e) requires that suspended rates are to go into effect "on motion" of the pipeline, not before the motion is made. Former §154.67(a) read that the proposed rate "shall become effective as of the date of receipt of such motion by the Commission or the expiration of the suspension period, whichever is later." Therefore, where the pipeline includes a motion in its filing and the proposed rates are suspended for a minimal period, the rates will become effective on the date proposed. Where the pipeline reserves its right to file a later motion and the rates are suspended for a minimal period, the rates will go into effect, later, on motion of the pipeline, as is required by the NGA. [Footnotes omitted.]

Here, the 15 degree HDP safe harbor and the provisions for posting calculated HDP levels are integral parts of ANR's overall proposal. Delaying the effective date of such integral parts of the overall proposal, while moving the rest of the proposal into effect, is an improper use of the ministerial motion rate process. Therefore, the Commission denies ANR's motion to put into effect only part of its proposal earlier than the rest of the proposal.

34. ANR has requested a November 1, 2004 effective date for the tariff sheet in the instant compliance filing. Since ANR has indicated a desire to have its entire proposal in effect by November 1, the Commission will permit ANR to move all the subject tariff sheets into effect on November 1, so long as ANR files a supplemental motion within five days of the date of this order. If, in light of the changes required by this order, ANR desires a later effective date for its proposal, it may motion the tariff sheets into effect on a later date, but that date must be prospectively from the date of such motion.

The Commission orders:

(A) The requests for rehearing are denied.

(B) The motion for stay is denied.

(C) Substitute First Revised Sheet No. 130.01 is accepted, effective November 1, 2004, conditioned upon ANR filing revised tariff language consistent with the September 30th Order within 15 days of the date of this order.

(D) ANR's suspended tariff sheets are permitted to be moved into effect as of November 1, 2004, or on a prospective date as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Deputy Secretary.