FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 31, 2006

In Reply Refer To:
ANR Pipeline Company
Docket No. RP06-445-000

ANR Pipeline Company
P.O. Box 2511
Houston, TX 77252-2511

Attention: Melissa G. Freeman
Senior Counsel

Reference: Extension of Service Agreement

Dear Ms. Freeman:

1. On July 26, 2006, ANR Pipeline Company (ANR) filed revised tariff sheets[1] that would add section 2.12(a) and (b) to its General Terms & Conditions (GT&C) permitting a shipper and ANR (1) to terminate a contract prior to its expiration in exchange for the shipper extending its use of all or part of the underlying capacity under new terms without competitive bidding or (2) to extend a contract with respect to all or part of the capacity as long as any applicable ROFR procedures have not been initiated. ANR requests an effective date of September 1, 2006. As discussed below, we find the proposal to be consistent with Commission policy and precedent, and therefore accept the tariff sheets to be effective September 1, 2006.

2. ANR proposes new GT&C section 2.12(a) and (b), captioned "Extension of Service Agreements." Under paragraph (a), ANR and a shipper "may mutually agree to the early termination of one or more Agreements in exchange for Shipper's extension of the use of all or part of the underlying capacity under new terms." Paragraph (a) further provides that the shipper "need not participate in an open season for the extension nor must the underlying capacity be posted on [ANR's website] as unsubscribed, available capacity prior to the extension." ANR asserts that this provision would enable the parties

[1] First Revised Sheet No. 101C.01 and Second Revised Sheet No. 101D to FERC Gas Tariff, Second Revised Volume No. 1.

to determine when it is in their best interests to renegotiate a service arrangement and further, because the decision to terminate and recontract capacity under this section must be mutual, the rights of both parties are protected. ANR states that a shipper would not agree to act under this provision unless it was in its commercial interest to do so, and ANR would not require an open season if it believed it could achieve greater benefits by recontracting with the shipper for all or a portion of the underlying capacity.

3. Paragraph (b) provides that the term of an agreement may be extended by mutual agreement of the parties "with respect to all or part of the underlying capacity (the exact terms of which are to be negotiated on a case-by-case basis in a not unduly discriminatory manner)." The agreement to extend under paragraph (b) must be reached prior to initiation of any applicable ROFR procedures. ANR further states that if the parties are not able to agree upon a new term length, then shippers may still rely on applicable ROFR procedures in ANR's tariff.

4. Public notice of the filing was issued on August 1, 2006. Interventions and protests were due on or before August 7, 2006. Pursuant to Rule 214, (18 C.F.R. § 385.214 (2006)), 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. BP filed comments seeking confirmation from ANR that the proposed provisions would apply to all firm transportation agreements, including discounted agreements. On August 11, 2006, ANR filed an Answer to BP's comments stating that the proposal was not limited to agreements of any particular type or term. ANR further asserted that because section 2.12 requires mutual agreement of the parties, its provisions would protect a shipper's transportation rights while facilitating ANR's operational planning ability. On August 11, 2006, Indicated Shippers filed an untimely protest, discussed below.

5. In their protest, Indicated Shippers describe the early termination proposal in paragraph (a) as targeted at situations where a shipper requests renewal of all or a portion of its capacity but asks that the capacity be shifted to a different rate schedule or a different type of service. Indicated Shippers believe that paragraph (b) is designed for renewal of capacity for the same type of service as performed under the existing contract. Indicated Shippers argue that both proposals are an attempt to circumvent principles underlying ROFR rights. According to Indicated Shippers, such principles are that an existing shipper exercising such rights must match a competing bid up to the maximum tariff rate, that the pipeline is not required to offer a discount rate for the subject capacity, and that the competitive bidding process is intended to protect against preferential treatment of favored shippers. Indicated Shippers state that these principles would be undermined by allowing existing shippers to continue to hold their capacity through alternatives which neither require competing bids nor require the existing shipper to pay the maximum recourse rate or even retain the same service.

6. Further, Indicated Shippers state that a rollover right at a discount rate without competitive bidding would violate the principle that "those parties who value the product or service the most should be the ones to have it."[2] Indicated Shippers maintain that to prevent circumvention of ROFR principles and for the sake of allocative efficiency, an existing shipper should only be allowed to renew a contract without competitive bidding where the shipper offers to pay the maximum tariff rate.

7. Finally, Indicated Shippers believe the proposals are at odds with Commission policy to eliminate any constraints on competitive bidding for capacity. To illustrate this policy, Indicated Shippers cites the Commission's elimination of a cap on the length of contract terms in bids for capacity under the ROFR process.[3] Indicated Shippers maintain that by attempting to entirely circumvent competitive bidding for contract renewals, ANR would flout this policy. Therefore, Indicated Shippers request that the Commission reject the proposal or require ANR to modify its proposal to only allow renewal outside the competitive bid process where the existing shipper offers to pay the maximum tariff rate, including all surcharges and the maximum fuel rate.

8. The Commission accepts ANR's revised tariff sheets and will not require ANR to modify its proposal to require an open season prior to recontracting with a shipper for capacity that terminated under section 2.12(a), or extending the term of a contract under section 2.12(b). The issue presented here is whether a pipeline is permitted either to extend an existing contract, or to enter into a new contract which supersedes and replaces an existing contract, without confirming through open season bidding that there are no other shippers willing to pay more for the subject capacity based on the net present value of their bids. This issue was addressed in *Northern Natural Gas Company* (*Northern Natural*)[4] where the Commission held that such a capacity allocation process was not required unless specifically mandated in the pipeline's tariff. The Commission based its decision, in part on the 1989 Rate Design Policy Statement,[5] wherein it stated that while allocative and productive efficiency is a necessary objective, it is not the only objective to be considered in allocating capacity.[6] While it is a goal of the Commission to see

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[2] *Citing* "Rate Design Policy Statement," 47 FERC ¶ 61,295, p. 62,053, *order on reh'g*, 48 FERC ¶61,122 (1989), *appeal dismissed without order sub nom. Wisconsin Public Service Commission v. FERC*, 966 F.2d 702 (D.C. Cir. 1992).

[3] *Citing* "Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services," 101 FERC ¶ 61,127, P4 (2002), *aff'd on reh'g*, 106 FERC ¶ 61,088 (2004).

[4] *Order on reh'g*, 111 FERC ¶ 61,379 (2005), *reh'g denied*, 113 FERC ¶ 61,188 (2005); *accord*, *Northern Natural Order on Rehearing*, 113 FERC ¶ 61,119 (2005).

[5] 47 FERC ¶ 61,295 (1989), *order on reh'g*, 48 FERC ¶ 61,122 (1989).

[6] *Id.* at 62,052-53.

capacity placed in the hands of those that value it most highly, the Commission assumes that the pipeline will always seek the highest possible rate from non-affiliated shippers, since it is in the pipeline's economic interest to do so.

9. This assumption underlies section 284.10(c)(5)(ii) of the regulations (Rate Flexibility) which states that "the pipeline may charge an individual customer any rate that is neither greater than the maximum rate nor less than the minimum rate on file for that service." Accordingly, while the Commission permits pipelines to implement allocation mechanisms based on net present value in order to allocate scarce capacity on its system to the shipper whose bid represents the highest value, the Commission does not require pipelines to implement such allocation mechanisms.

10. ANR's tariff requires an open season only in certain circumstances described in its GT&C, *e.g.*, in connection with the exercise of ROFR rights under section 22; to implement capacity releases under section 21; in order to reserve existing capacity for expansion projects under section 3.2; when, under section 35.5, ANR grants a shipper's request to reduce capacity under a contract for reasons other than those described in section 35.1 through 35.4; and when, under section 2.10(i)(1), ANR receives a request for service to begin one year or more after the request and ANR wishes to sell the same capacity on an interim basis. Since ANR's tariff requires the use of an auction to allocate capacity only in limited circumstances, it is not necessary for ANR to include a posting and auction requirement in its proposal.

11. Indicated Shippers describe what they believe to be key principles of the ROFR process that would be undermined by the proposal, namely that an existing shipper exercising its ROFR rights must match a competing bid up to the maximum tariff rate, that the pipeline is not required to offer a discount rate for the subject capacity, and that the competitive bidding process is intended to protect against preferential treatment of favored shippers. However, this description does not take into consideration the fundamental goals of the ROFR process, which are to protect captive long-term customers from a pipeline's exercise of monopoly power, and to mitigate the effects of pre-granted abandonment on such customers.[7] Proposed section 2.12 addresses these goals by requiring mutual agreement between a shipper and ANR in order to exercise early contract termination under paragraph (a) or an extension under paragraph (b). A shipper whose existing contract includes ROFR rights and who is capable of negotiating a contract termination or extension to its satisfaction under section 2.12 has demonstrated that it does not need the protection of the ROFR process. Further, as described above, ANR's tariff does not contain a general auction requirement that would force shippers

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[7] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, 65 *Fed.Reg.*10156 (Feb. 25, 2000), *FERC Statutes and Regulations* ¶ 31,091 at 31,336 (2000).

whose contracts do not include ROFR rights to subject their capacity to an open season in order to exercise the options offered under section 2.12. Therefore, the Commission denies Indicated Shippers' protest.

By direction of the Commission.

Magalie R. Salas,
Secretary.