

121 FERC ¶ 61,093
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

ANR Pipeline Company

Docket Nos. RP07-439-000
RP07-439-001

ORDER ESTABLISHING HEARING

(Issued October 26, 2007)

1. On May 1, 2007, in Docket No. RP07-439-000, ANR Pipeline Company (ANR) filed its report of Operational Purchases and Sales of Gas for the 12-month period from January 1 through December 31, 2006. ANR states that it submits this filing pursuant to section 38.3 of the General Terms and Conditions (GT&C) of its tariff.¹ On August 1, 2007, in Docket No. RP07-439-001, ANR filed a supplemental statement providing additional information concerning its May 1, 2007 filing.

2. ConocoPhillips Company (ConocoPhillips) protests the filings, arguing that ANR has not supported its claim that it should be able to retain the revenues from the sale of certain alleged “excess” gas and instead should be required to credit the net revenues to the shippers on its system. ExxonMobil Gas & Power Marketing Company, a division of ExxonMobil Corporation (ExxonMobil), filed an answer in support of ConocoPhillips’ protest. Madison Gas and Electric Company (Madison) filed comments asking the Commission to adopt procedures for obtaining additional information regarding the sale of the gas and ANR’s proposal to retain the net revenues.

3. As discussed below, the Commission finds that the existing record in this proceeding is insufficient to permit the Commission to determine whether ANR’s proposal is just and reasonable. Accordingly, the Commission will establish a hearing to address ANR’s filings.

¹ ANR FERC Gas Tariff, Second Revised Volume No.1, Third Revised Sheet No. 197.

Description of the Filings

4. ANR states that section 38.3 of its GT&C requires it to file an annual report on or before May 1 of each year reflecting its operational purchases and sales of natural gas for the 12-month period ending on December 31 of the previous year. ANR explains that the report contains information relating to the sources of the gas purchased/sold, the dates of the purchases/sales, volumes, the purchase/sale prices, the cost and revenues for the purchases/sales, and the disposition of the associated costs and revenues for all operational purchases and sales except those associated with its cashout, which is addressed separately in section 15 of the GT&C.

5. ANR's current report consists of two schedules, the first of which (Schedule 1) is a summary detailing the purchases/sales by category for the 12 months ending December 31, 2006. Schedule 2 provides supporting detail describing the monthly activity. ANR points out that the report shows that it made purchases for line pack replacement and for fuel related to its non-TBO tracker contracts during the reporting period. Additionally, ANR states that, during the same period, it also made sales of excess gas that it owned but did not use in its operations.²

6. In the August 1, 2007 supplemental filing in Docket No. RP07-439-001, ANR explains that the May 1, 2007 filing (Line No. 1 of Schedule No. 1) shows the sale of excess gas in the amount of 2,633,464 Dth (2.6 Bcf). ANR states that this represents the sale of excess gas owned by ANR and not used in operations. ANR asserts that it has owned this gas and held it in storage since at least 1993, when its sales service was unbundled in compliance with Order No. 636.³ According to ANR, during its restructuring proceeding, it was determined that, subject to review in its next rate proceeding, it would maintain 20 Bcf of gas in storage for its system balancing and operational needs.⁴ ANR further argues that, at that time, it had approximately 22.6 Bcf in storage, and in its next rate proceeding, 20 Bcf was confirmed as the appropriate

² ANR states that this report does not include items such as flash gas purchases and sales and that those data will be supplied in the annual cashout reconciliation filing that it makes under section 15 of its GT&C.

³ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom., United Distributions Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

⁴ ANR cites *ANR Pipeline Co.*, 62 FERC ¶ 61,162 (1993).

amount to maintain in storage for system operations.⁵ According to ANR, it maintained the excess 2.6 Bcf of the gas in storage from at least 1993 until it sold the gas in 2006. ANR admits, however, that the exact source of the gas is unknown, although it contends that it is reasonable to assume that most or all of this gas came from purchases it made prior to the restructuring in 1993.

Notices, Interventions, Protest, and Answers

7. Notice of ANR's filing in Docket No. RP07-439-000 was issued on May 8, 2007. Notice of the filing in Docket No. RP07-439-001 was issued on August 6, 2007. Interventions and protests were due as provided in the Commission's regulations.⁶ Pursuant to Rule 214,⁷ all timely filed motions to intervene are granted.

8. Several persons filed motions to intervene out-of time, including ExxonMobil, which supports ConocoPhillips' protest. ANR filed answers opposing these late interventions and the protests. ANR maintains that, in light of the public notices of ANR's May 1, 2007 filing and its August 1, 2007 filing, the companies seeking late intervention have failed to demonstrate good cause for their failure to intervene in a timely manner. However, the Commission finds that granting the motions to intervene out-of-time at this stage of the proceeding will not delay or disrupt the proceeding or create additional burdens for other parties. Accordingly, the Commission grants the motions to intervene out-of-time.

9. In its protest, ConocoPhillips emphasizes that ANR admits that it does not know the exact source of the excess gas or even if all of the purchases were made prior to the unbundling of its services. Similarly, continues ConocoPhillips, ANR has not shown that this excess gas is not (1) gas resulting from prior period adjustments; (2) gas resulting from fuel over-recoveries prior to the implementation of its fuel tracker and true-up; (3) gas resulting from prior period imbalances; and/or (4) gas used to provide system balancing or other services, with related costs included in the rates paid by shippers. ConocoPhillips objects to ANR's assumption that its shippers have no claim to the revenues from the sale of the gas, given ANR's failure to demonstrate the sources and possible uses of the gas.

10. According to ConocoPhillips, ANR bases its claim that it had 2.6 Bcf of excess gas in storage on a general reference in the Commission's order in ANR's restructuring proceeding and a general reference in the Initial Decision in ANR's last rate case, which

⁵ ANR cites *ANR Pipeline Co.*, 78 FERC ¶ 63,003 (1997).

⁶ 18 C.F.R. § 154.210 (2007).

⁷ 18 C.F.R. § 385.214 (2007).

was settled before the Commission ruled on it. Although ConocoPhillips acknowledges that the Presiding Administrative Law Judge (ALJ) in that case stated that ANR had 183 Bcf of base gas and 20 Bcf of working gas,⁸ ConocoPhillips emphasizes that the Commission itself has never addressed ANR's future sale of excess gas.

11. ConocoPhillips next asserts that ANR has been collecting its total system costs (including the costs associated with this excess gas, along with carrying costs and a profit) through its Commission-authorized rates. Therefore, reasons ConocoPhillips, ANR's proposal to retain the revenues associated with the sale of this excess storage gas should be considered in light of ANR's recent proposal to charge a cashout surcharge of \$1.2424/Dth in order to recover a negative balance that accumulated in ANR's cashout account over several years. ConocoPhillips points out that ANR shifts those costs to shippers when a negative balance accumulates. Because there is no showing that ANR has not collected revenues along with profits from shippers related to this excess gas, ConocoPhillips contends that ANR should credit the net revenues from the 2.6 Bcf sale to its system shippers either through its cashout mechanism (and immediately eliminate its surcharge for historic undercollection) or to its fuel account.

12. ConocoPhillips further asserts that ANR has failed to demonstrate that the excess gas retained in storage should not be treated as a prior period adjustment for the benefit of its shippers, and in fact, ANR apparently concedes that this excess gas has been retained in storage reserved for system operations and that its shippers have borne the entirety of this storage cost for the past 14 years. ConocoPhillips states that the Commission recently found that a hearing was necessary to address the treatment of a similar possible gain on the proposed sale of storage gas in *Transcontinental Gas Pipe Line Corp. (Transco)*⁹ ConocoPhillips concludes that the Commission should summarily reject ANR's proposal, and ExxonMobil and Madison support the adoption of additional procedures to gather additional information regarding ANR's sale of the storage gas and its proposal to retain all of the associated net revenues.

13. ANR filed an answer to the protest, and ConocoPhillips filed an answer to ANR's answer. Michigan Consolidated Gas Company (MichCon) filed an answer to ANR's

⁸ ConocoPhillips cites *ANR Pipeline Co.*, 78 FERC ¶ 63,003, at p. 65,031 (1997).

⁹ 119 FERC ¶ 61,105, at P 13 (2007). ConocoPhillips observes that the Commission stated that the

determinations of who bore the financial burdens of the [pipeline]storage gas and who had the risk of capital loss, as well as which customers, if any, are entitled to any benefits of the sale of the excess [storage] gas, and how these benefits would be provided, require the further development of the record provided by an evidentiary hearing.

answer and Madison's comments. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹⁰ prohibits an answer to a protest unless otherwise ordered by the decisional authority. In this case, the Commission will accept the answers because they have provided additional information that assisted the Commission in its decision-making process.

14. According to ANR, prior to the restructuring, it owned all of the gas held in its storage fields, and when it unbundled its sales service, it sold most of this gas in place to the customers who were assigned ANR's storage capacity.¹¹ ANR repeats its assertion that it was authorized to retain 20 Bcf of working gas for system balancing¹² and that it owned any gas remaining in storage beyond the gas sold to customers and the retained 20 Bcf.

15. ANR contends that ConocoPhillips does not support its claim that the excess gas results from either a prior period gas imbalance or fuel over-recovery.¹³ ANR explains that fuel retention gas and imbalance gas are accounted for separately and are subject to distinct tariff mechanisms that govern the disposition of the costs and revenues relating to such gas. ANR further explains that it makes separate filings every year to (1) re-determine its fuel charges (Transporter's Use Percent); and (2) reconcile the costs and revenues associated with imbalances as part of the operation of its cashout program.¹⁴

¹⁰ 18 C.F.R. § 385.213(a)(2) (2007).

¹¹ ANR cites *ANR Pipeline Co.*, 62 FERC ¶ 61,079, at p. 61,589 (1993) ("ANR should assign at cost the working gas to the customers who wish to take the storage capacity.")

¹² See *ANR Pipeline Co.*, 65 FERC ¶ 61,162, at p. 61,790, 61,794 (1993) ("ANR increase[d] its working gas from 10 Bcf to 20 Bcf. . . . We are satisfied that ANR has reserved an appropriate level of storage for system management purposes.") The Commission stated that further refinement of this amount was to be addressed in ANR's next rate case. In that rate case (Docket No. RP94-43) ANR continued to propose that it retain 20 Bcf for system balancing. See *ANR Pipeline Co.*, 78 FERC ¶ 63,003, at p. 65,031 (1997). The parties ultimately settled this case with no change in the amount of storage gas retained for system balancing.

¹³ Ironically, states ANR, ConocoPhillips suggests that the gas may constitute a fuel over-recovery prior to implementing its fuel tracker and true-up. Even if that were true, ANR states that it would be entitled to the gain from the sale of such gas because the true-up applies prospectively from the date the Commission required ANR to implement the true-up under section 5 of the Natural Gas Act (NGA). See *ANR Pipeline Co.*, 108 FERC ¶ 61,050 (2004), *order on reh'g*, 110 FERC ¶ 61,069 (2005).

¹⁴ See sections 1.68 and 15 of the GT&C.

According to ANR, its last fuel tracker filing was accepted in Docket No. RP07-181-000,¹⁵ and its last cashout filing was approved in Docket No. RP07-436-000.¹⁶ ANR asserts that, if the source of the 2.6 Bcf of gas that it sold in 2006 was related to either shipper imbalances or fuel retention, the gas would have been reported in these or earlier filings. Moreover, continues ANR, any prior period adjustments in one year are included in the subsequent year's filing. ANR contends that, because the sale of the 2.6 Bcf of gas did not involve fuel or imbalance gas for which ANR's tariff has a true-up mechanism, there is no crediting obligation associated with this gas. Indeed, states ANR, the Commission has held that shippers are not entitled to credits of revenues associated with operational sales of excess gas.¹⁷

16. ANR rejects the protesters' claim that shippers have paid for the gas through rates, and having borne the cost of the gas, they are equitably entitled to share in the gain. ANR contends that the 2.6 Bcf that was sold was never included in ANR's rates. Thus, reasons ANR, its shippers have no equitable claim to the gain from the sale of this gas. Further, ANR challenges the assertion that shippers are entitled to some part of a gain resulting from the sale of an asset paid for through rates.

17. ANR cites Opinion No. 144, stating that the Commission found that its Uniform System of Accounts requires that the investor bears the risk of loss as well as the possibility of gain.¹⁸ Subsequent to Opinion No. 144, continues ANR, the Commission has stated repeatedly that its "well-established policy is to permit regulated companies to retain the gain on a sale of a utility asset."¹⁹

18. ANR disputes the need for a hearing in this proceeding. ANR claims that, in *Transco*, the Commission set for hearing the accounting treatment of a gain on top storage gas because the issue was already being litigated in *Transco's* pending rate case.²⁰ Moreover, continues ANR, there appeared to be no dispute in *Transco* that the gain at

¹⁵ Unpublished Letter order dated March 15, 2007.

¹⁶ *ANR Pipeline Co.*, 119 FERC ¶ 61,218 (2007).

¹⁷ *ANR Pipeline Co.*, 111 FERC ¶ 61,290, at P 21 (2005).

¹⁸ ANR cites *Florida Gas Transmission Co.*, 20 FERC ¶ 61,298, at p. 61,581 (1982).

¹⁹ ANR cites *Natural Gas Pipeline Company of America*, 101 FERC ¶ 61,125, at P 43 (2002); *East Tennessee Natural Gas Co.*, 75 FERC ¶ 61,110, at p. 61,369 (1996).

²⁰ ANR cites *Transcontinental Gas Pipe Line Corp.*, 119 FERC ¶ 61,105, at P 14-15 (2007).

issue related to gas costs recovered in the pipeline's rates. In contrast, claims ANR, the cost of the 2.6 Bcf of excess gas that it sold has not been borne by ANR's shippers.

19. In its answer to ANR's answer, ConocoPhillips states that ANR provides only conclusory, unsubstantiated statements that fail to demonstrate that it should retain the revenues from its excess gas sales rather than crediting the revenues to its shippers. Further, states ConocoPhillips, if the Commission does not summarily require ANR to credit all of the revenues from the excess gas sales to its shippers, the Commission should provide additional procedures, including discovery, so that the Commission and the shippers can investigate the sources of the excess gas, how ANR has stored the gas, and how ANR has used the gas.

20. For example, continues ConocoPhillips, ANR has not explained why it is selling this gas more than 13 years after its restructuring proceeding, nor has it provided information showing where this gas has been stored. ConocoPhillips further contends that ANR has not explained the regulatory authority under which it has stored this merchant gas that was not retained for operational purposes. ConocoPhillips raises other questions, including how and to what extent ANR's use of jurisdictional facilities to store its own merchant gas was addressed in ANR's rates or whether and how the pipeline's ratepayers were compensated for its use of these facilities to store the gas. Moreover, states ConocoPhillips, it is not clear whether and to what extent the storage of this excess gas impacted the pipeline's storage customers and other shippers' ability to inject or transport gas on its system.

21. ConocoPhillips cites *Starks Gas Storage L.L.C. (Starks)*,²¹ stating that the Commission rejected a pipeline's proposal to store and sell its own merchant gas at its storage field. According to ConocoPhillips, the Commission held that the proposal was contrary to Order No. 636's unbundling requirement, which the Commission found prevents a pipeline or storage provider from owning any of the excess working gas that may be stored in its facility from time to time.²² Arguably, states ConocoPhillips, ANR has stored its own merchant gas at no cost for over 13 years, which would be a competitive advantage for the pipeline over other natural gas sellers.

22. Finally, ConocoPhillips claims that ANR erroneously interprets the *Transco* case concerning excess gas sales by a pipeline. According to ConocoPhillips, the Commission set for hearing the issue of the sale of Transco's excess gas because the Commission

²¹ 111 FERC ¶ 61,105, at P 51, *reh'g denied*, 111 FERC ¶ 61,484 (2005).

²² ConocoPhillips cites *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, at p. 30,393 (1992).

determined that it did not have a complete record to determine whether the Transco proposal was just and reasonable. ConocoPhillips maintains that the Commission consolidated the excess gas sales hearing with the ongoing rate case because there were common issues of law and fact in the two cases.²³

23. MichCon contends that the proceeds from ANR's sale of its excess gas should not be credited to ANR's cashout mechanism. MichCon maintains that, if ANR did retain system balancing gas at the expense of its system shippers for a period that began before Order No. 636, the proceeds from the sale of such gas should be credited to all of ANR's firm shippers who have paid the fixed costs of supporting ANR's system, which would include the costs incurred to support retention of the 2.6 Bcf of excess gas.

Discussion

24. The Commission finds that ANR has not provided sufficient support for its proposal to retain the revenues from its sale of the alleged excess gas. The protesters have raised valid concerns regarding ANR's proposal, and the existing record in this proceeding is inadequate to allow the Commission to determine the source of and ownership rights to the excess gas and whether the proposal is just and reasonable. Accordingly, the Commission will establish an evidentiary hearing to examine all the issues raised in the protests and to develop a more complete record concerning the source of the excess gas, the need to retain the gas in storage for 14 years, and the entitlement to the proceeds from the sale of the gas on which the Commission can base its decision.

25. The Commission's action here is consistent with its action in the *Transco* proceeding. In that case, although the Commission consolidated the proceeding with an ongoing rate case, the Commission's rationale for requiring a hearing to address Transco's proposal applies to ANR's sale of the 2.6 Bcf of excess storage gas as well:

[T]he Commission will set for hearing Transco's request [for permission to account for the sale of top storage gas in a different manner than that provided by its tariff] because the Commission lacks a complete record to determine whether Transco's proposal is just and reasonable. Determinations of who bore the financial burdens of the Eminence storage gas and who had the risk of capital loss, as well as which customers, if any, are entitled to any benefits of the sale of the excess Eminence gas, and how these benefits would be provided, require the further development of the record provided by an evidentiary hearing.²⁴

²³ ConocoPhillips cites *Transcontinental Gas Pipe Line Corp.*, 119 FERC ¶ 61,105, at P 14 (2007).

²⁴ *Transcontinental Gas Pipe Line Corp.*, 119 FERC ¶ 61,105, at P 13 (2007).

Similarly, the Commission will set for hearing all the issues raised by ANR's sale of the 2.6 Bcf of excess gas in order to obtain the necessary facts that will allow the Commission to make a reasoned decision and achieve a just and reasonable resolution of this proceeding.

The Commission orders:

(A) Pursuant to the authority of the NGA, particularly sections 4, 5, 8, and 15, a public hearing will be held in Docket Nos. RP07-439-000 and RP07-439-001 concerning the lawfulness of ANR's filings.

(B) A Presiding Administrative Law Judge (ALJ), to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304, must convene a prehearing conference in this proceeding to be held within 20 days of the date this order is issued, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The prehearing conference will be held for the purpose of establishing a procedural schedule. The ALJ is authorized to conduct further proceedings in accordance with this order and the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.