

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. RP99-301-095

ORDER GRANTING CLARIFICATION

(Issued March 29, 2004)

1. On October 15, 2003, the Commission issued a letter order (October 15 Letter Order) in this proceeding rejecting a non-conforming service agreement between ANR Pipeline Company (ANR) and Interstate Gas Supply Company on the grounds that the agreement contained a “must-flow” provision, a term and condition of service not authorized by ANR’s tariff.<sup>1</sup> ANR requests clarification or in the alternative rehearing of that letter order. The Commission will grant clarification. This order is in the public interest because it will encourage innovative methods of creating additional capacity that are just and reasonable and not unduly discriminatory.

**Background**

2. On September 15, 2003, ANR Pipeline Company (ANR) filed a non-conforming service agreement with Interstate Gas Supply, Inc. (IGS) because it contains a provision that differs materially from the Form of Service Agreement contained in ANR's tariff. The non-conforming service agreement between ANR and IGS, under Rate Schedule FTS-1, contained a "must flow" provision which allows ANR to require IGS to flow on any given day 12,000 Dth of its 55,000 Dth/d contract level between the primary receipt and delivery points in return for a competitive rate. In its prior filing ANR stated that a provision to ensure gas flow would not present a risk of undue discrimination against other shippers, nor would the service to IGS be provided in a manner inconsistent with the FTS-1 Rate Schedule. ANR further stated that having the assurance that certain amounts of gas would flow on any particular day would enable ANR to provide other primary firm service and ensure the gas flow necessary to support the incremental demand. ANR also stated that it was willing to provide the same agreement to other shippers should the same operational conditions exist.

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<sup>1</sup> ANR Pipeline Company, 105 FERC ¶ 61,062 (2003).

3. The Commission found that the must flow provision constitutes a new term and condition of service that is not presently allowed by ANR's FTS-1 Rate Schedule, and would not be available to other shippers. The Commission held that pipelines are not allowed to enter into contracts that contain negotiated terms and conditions of service and, therefore, rejected the proposed service agreement. The Commission further held that the rejection was without prejudice to ANR's right to either remove this non-conforming provision from the IGS Agreement or, alternately, to file an application to provide the service under a new generally applicable rate schedule. The Commission noted that should ANR file to establish such a new rate schedule, ANR was advised to include in its transmittal letter, and to the extent applicable, in its rate schedule, a detailed explanation of the following: operational or other conditions under which ANR would need an agreed upon level of flow from a shipper; whether the required level of flow represents a minimum or maximum level that the shipper can flow; how such an arrangement would increase operational efficiency and marketing opportunities, or decrease the likelihood of ANR issuing an OFO; and how such provision would affect the shipper's right to release capacity. Based on the Commission's October 15 Letter Order, ANR removed the must-flow provision from its negotiated agreement with IGS. ANR has also requested rehearing of the October 15, 2003 Letter Order.

### **Discussion**

4. In its request for clarification, ANR argues that the Commission was unduly rigid in holding that the Commission does not approve any non-conforming agreements that contain negotiated terms and conditions of service. ANR asserts that the Commission can approve material deviations from a pipeline's tariff as long as those deviations do not have the potential to be unduly discriminatory. ANR further asserts that the "must flow" provision that it removed from its contract with IGS has little potential to be unduly discriminatory and might make additional capacity available on constrained sections of its pipeline. ANR further states that it assumes that the Commission's October 15 Letter Order was not announcing a new policy of prohibiting any material deviations and thus ANR requests clarification that the Commission will continue to examine and approve such requests when they are just and reasonable. ANR requests the Commission to clarify that ANR is not forced to file a new rate schedule if it wants to utilize contractual must flow conditions to create additional capacity. ANR further states that it is willing to consider the potential for a new rate schedule, but is concerned that this option may not be workable or economic. It concludes that if this is true, the Commission's prior action here would remove potential capacity permanently from the marketplace. Alternatively ANR requests rehearing because, according to ANR, the Commission has provided no basis for why such a proposal can only be provided in a new rate schedule.

5. The Commission first reiterates that the "must-flow" provision initially contained in ANR's non-conforming agreement with IGS imposing conditions concerning the use of the capacity was a term and condition of service. As the October 15 Letter Order

stated, the Commission generally does not permit negotiated terms and conditions of service different from those in the tariff because of the risk of undue discrimination.<sup>2</sup>

6. The Commission's policy regarding negotiated terms and conditions of service presents a difficult issue in the instant case because the experimental "must-flow" provision ANR had proposed appears to have considerable merit given the additional information that ANR has provided in its request for clarification. As ANR now explains it, parts of ANR's system can become constrained or sold out. In particular, ANR was concerned that in the path having the opposite direction of flow of IGS's contract, capacity would become unavailable this winter. Thus, ANR considered whether it should enter into a short-term transportation arrangement to see if it could make more capacity available to shippers without having to build new facilities. ANR asserts that the arrangement entered into with IGS was an appropriate vehicle as it was a small contract for a single winter. It claims that IGS felt comfortable it would be able to assure flow for 12,000 dekatherms of its 55,000 dekatherm contract level, or, in other words about 22 percent of the contractual amount. Because the purpose of the arrangement was to explore the creation of additional capacity on ANR by contractual means, ANR specifically limited its ability to invoke the condition to when such additional capacity had been sold.

7. ANR states that, in contrast, it made the ability to invoke the provision as broad as possible once the dependent capacity was sold because ANR had never before attempted such a contractual approach. ANR took this approach so that it could ensure that there was no degradation to existing service, while at the same time not necessarily requiring IGS to flow every day. ANR stated it would have been willing to entertain offers from other shippers and particularly would have liked to examine offers that might have helped other constrained paths. However, the primary goal was to put into effect at least this one contract for this winter so that ANR could evaluate how it worked and how ANR could more effectively utilize such provisions and thereafter modify its tariff to reflect that its experience. ANR therefore requests that the Commission grant clarification.

8. The Commission will grant the requested clarifications. Consistent with Commission policy and precedent, the Commission will continue to evaluate and approve requests for innovative proposals to increase capacity that are just and reasonable and not unduly discriminatory. To the extent that such a proposal contains terms and conditions of service that are not part of a pipeline's existing tariff or rate schedules, a pipeline must

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<sup>2</sup> Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, Regulation of Negotiated Transportation Services, Statements of Policy and Comments, 74 FERC ¶ 61,076 (1996), order on clarification, 74 FERC ¶ 61,194 (1996), order on reh'g, 75 FERC ¶ 61,024 (1996), Modification of Negotiated Rate Policy, 104 FERC ¶ 61,134 (2003). See also ANR Pipeline Company, 97 FERC ¶ 61,244 at 62,024 (2001).

file appropriate revisions to both its tariff and/or its rate schedule, or file a new rate schedule that incorporates such provisions. If a pipeline finds that it cannot move forward in the more general fashion without more information, it may propose an experimental arrangement that is limited in scope and duration, and the Commission will evaluate such proposal on its merits. The Commission will consider a fully supported proposal by ANR to conduct an experiment to determine if the “must-flow” concept first proposed in its contract with IGS is feasible. Any such proposal must be filed with the Commission as a non-conforming agreement pursuant to this order. Thereafter, if ANR wishes to continue use of the “must-flow” provision it has advanced here, it must file an amendment to its generally applicable terms and conditions defining the use of such a “must-flow” provision in generic terms and the conditions under which such a provision would apply. Any such generic tariff filing should be supported by specific reference to the results of the experiment authorized by this order.

The Commission orders:

ANR’s request for clarification is granted, and its alternative request for rehearing is denied, as explained in the body of this order.

By the Commission. Commissioner Kelly not participating.

Linda Mitry,  
Acting Secretary.