

170 FERC ¶ 61,269  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

ANR Pipeline Company

Docket No. RP20-608-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS, SUBJECT TO  
REFUND, AND ESTABLISHING PAPER HEARING PROCEDURES

(Issued March 27, 2020)

1. On February 28, 2020, ANR Pipeline Company (ANR) filed revised tariff records to define and clarify ANR's use of nominal and substantial penalties on non-critical and critical days, respectively.<sup>1</sup> Among other things, ANR proposes to (a) revise provisions for Daily Scheduling Penalties (DSP) in Rate Schedules ETS, STS, FTS-1, FTS-2, FTS-3, ITS, and PTS-2; (b) add language in each Unauthorized Overrun Service (UOS) provision in the affected rate schedules; (c) revise language in the allocation of deliveries Section of its Tariff; (d) revise language in the waiver of penalties Section of its Tariff; and (e) add provisions for the crediting of penalty revenues Section of its Tariff. ANR requests an effective date of April 1, 2020.

2. For the reasons discussed below, we accept and suspend the proposed tariff records listed in the Appendix to be effective September 1, 2020, subject to refund and the outcome of a paper hearing regarding the issues raised by the tariff records.

**I. Details of the Filing**

3. ANR states that historically shippers had flexibility to exceed tolerance and overrun levels due to the operational flexibility of its system and the cooperation established between itself and its shippers. ANR reports that, more recently, there has

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<sup>1</sup> See Appendix.

been less flexibility to accommodate scheduled delivery quantities outside of tolerance and contract levels because there is less available capacity due to increasing capacity sales. ANR states that this fact highlights the need for the proper tools to incentivize shippers to schedule more accurately.<sup>2</sup> ANR states that the proposed modifications are “intended to ensure that the operational integrity of ANR’s pipeline system is protected and shippers accurately schedule gas volumes on a daily basis so that ANR may continue to reliably meet its existing firm obligations.”<sup>3</sup>

4. As discussed below, ANR proposes modifications to the “Charges” provisions in affected rate schedules;<sup>4</sup> General Terms and Conditions (GT&C) Section 6.14.1, Allocation of Deliveries; GT&C Section 6.18.13, Waiver of Penalties; and GT&C Section 6.31, Crediting of Penalty Revenues.

**A. Daily Scheduling Penalties**

5. ANR states that Daily Scheduling Penalties (DSP) are outlined within the Charges provisions of ANR’s rate schedules<sup>5</sup> and, as currently provided in those rate schedules, ANR is able to assess such DSPs on each dekatherm of variance that exceeds ANR’s Swing Percentage<sup>6</sup> only when it and a point operator have not agreed to an allocation of

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<sup>2</sup> ANR Filing at 2.

<sup>3</sup> *Id.*

<sup>4</sup> Rate Schedule ETS (enhanced transportation service), section 5.1.3; Rate Schedule STS (small shipper), section 5.2.3; Rate Schedule FTS-1 (firm transportation service), section 5.3.3; Rate Schedule FTS-2, section 5.4.3; Rate Schedule FTS-3, section 5.5.3; Rate Schedule ITS (interruptible transportation service), section 3(2); and Rate Schedule PTS-2 (firm pooling transportation service), section 5.17.3.

<sup>5</sup> Rate Schedules ETS, FTS-1, FTS-2 and ITS (DSP Rate Schedules).

<sup>6</sup> Part 6.1.76-GT&C, Definitions, of ANR’s Tariff provides that the term “Swing Percentage” shall mean the percentage of quantities allocated at Delivery Points to each Shipper that will be excused from overrun charges or DSPs, as applicable. ANR states that the Swing Percentage shall be equal to ten percent 10% of the Delivery Point nomination for such Shipper, unless ANR shall have posted a notification that an Extreme Condition Situation exists. ANR states that in such case, the Swing Percentage shall be equal to five percent of the Delivery Point nomination for such Shipper (Swing Percentage).

deliveries methodology using ranked, pro rata, percentage, swing, or an operator provided value methodology, which ANR states may unintentionally and unfairly favor certain shippers. Additionally, ANR's Tariff stipulates that the rate for any DSP be the highest applicable Rate Schedule ITS maximum rate to the applicable delivery point.

6. ANR proposes to clarify its ability to assess DSPs to include those instances where ANR and a point operator have agreed to an allocation of deliveries methodology. ANR states that this revision to the DSP provisions of individual Rate Schedules incorporates a reference to an existing tariff provision, GT&C Section 6.14.1(c), that will allow ANR to assess DSPs in all instances where an allocation of deliveries is required to ensure that all shippers accurately schedule their daily gas requirements, regardless of the methodology utilized to allocate such deliveries.

7. Further, in each DSP Rate Schedule, ANR proposes to clarify the use of the term "exceeds" by providing that DSPs are applicable to under-deliveries which exceed a Swing Percentage as well as over-deliveries which exceed a Swing Percentage.

8. ANR asserts that impacts on the operation of ANR's pipeline system can be equally detrimental whether a shipper over-delivers or under-delivers its scheduled quantities. Therefore, ANR proposes to revise its DSP provisions of individual Rate Schedules to clarify that under-deliveries outside of an established Swing Percentage shall be assessed a DSP so that the proper incentives are provided to all shippers to accurately schedule their daily gas requirements. Citing to *2008 Columbia*,<sup>7</sup> ANR asserts that the Commission has recognized that "[I]t is reasonable for the penalty for under-scheduling to be the same as for over-scheduling. Otherwise, there would be an incentive for shippers to schedule significantly less service than they expect to take, so as to avoid the penalty for over-scheduling."

9. In addition, ANR proposes to update and clarify in each DSP Rate Schedule that the nominal DSP applicable on non-critical days will be equal to the applicable Rate Schedule ITS maximum rate at the delivery point for the scheduled path for gas volumes outside of the Swing Percentage.<sup>8</sup> ANR states that its Rate Schedules currently stipulate

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<sup>7</sup> Filing at 4 (citing *Columbia Gas Transmission Corp.*, 124 FERC ¶ 61,122, at n.20 (2008) (*2008 Columbia*)).

<sup>8</sup> *Id.* (citing *El Paso Nat. Gas Co.*, 139 FERC ¶ 61,096, at P 82 (2012) (*2012 El Paso*) ("[T]he Commission has recognized that pipelines may establish a nominal scheduling penalty equal to the IT rate during non-critical periods . . . . Because the lost opportunity is an interruptible sale . . . the Commission finds that the non-critical scheduling penalty should continue to be based on the IT rate, not on the rate schedule under which the penalty was incurred"); *Millennium Pipeline Co., L.L.C.*, 130 FERC ¶ 61,074, at P 20 (2010) (*Millennium*) ("Commission policy permits a nominal

that DSPs be tied to the highest applicable Rate Schedule ITS maximum rate to that delivery point.<sup>9</sup> ANR avers that the revision proposed in its filing is consistent with Commission policy and precedent.<sup>10</sup>

10. Also, ANR proposes to add language to the individual Rate Schedules to clarify that the substantial DSPs applicable on posted critical days shall be equivalent to ANR's existing substantial critical day penalty stated for unauthorized overrun service.<sup>11</sup>

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scheduling penalty at the IT rate level for non-critical days . . . to provide an incentive to schedule accurately . . . .”); *2008 Columbia*, 124 FERC ¶ 61,122 at P 10 (“As the Commission explained in [*Natural Gas Pipeline Co. of America*, 103 FERC ¶ 61,174, at P 63 (2003) (*Natural*)] during non-critical periods, a scheduling variance will not have operational effects on the pipeline. Establishing a scheduling penalty at the IT rate for non-critical periods is intended to provide an incentive for shippers to schedule accurately, and to compensate the pipeline for its lost opportunity costs.”); *Columbia Gas Transmission Corp.*, 119 FERC ¶ 61,267, at P 30 (2007) (*Columbia*) (“The ITS rate is [a] nominal penalty rate that provides an incentive to schedule accurately and compensates [the pipeline] for lost opportunity costs. Accordingly, it is permissible for [the pipeline] to impose a scheduling penalty at the ITS rate during non-critical periods and, as noted . . . in discussing critical period scheduling penalties, it need not show actual operational harm.”)).

<sup>9</sup> ANR explains that given ANR's multiple-zone rate structure, it is possible that the current DSP provision could generate a penalty rate that is greater than the applicable 100 percent load factor ITS rate associated with a shipper's scheduled transportation path. Therefore, ANR asserts that the changes proposed in its filing eliminate that possibility. *Id.*

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.* (citing *2008 Columbia*, 124 FERC ¶ 61,122 at P 10 (“[the Commission] found that [the pipeline's] proposed scheduling penalties are properly calibrated to potential threats to the system . . . . If [the pipeline] declares a Critical Day based on a finding that it faces a ‘threat to its system integrity and/or [its] ability to meet its firm service obligations,’ [the pipeline] may impose a substantial scheduling penalty . . . .”)).

## **B. Unauthorized Overrun Service**

11. ANR states that its firm service rate schedules which include UOS charges,<sup>12</sup> currently only contain provisions which allow for a substantial penalty which is intended to prevent shipper behavior that may contribute to the impairment of reliable service on ANR's system on a posted critical day.<sup>13</sup> ANR proposes to incorporate a nominal, non-critical day penalty in those rate schedules with UOS charges to incentivize shippers to accurately schedule authorized overrun service on those days when they expect gas requirements in excess of their delivery point Maximum Daily Quantities (MDQ).

12. Further, ANR proposes to add language in each UOS provision stating that a nominal UOS penalty will be assessed on non-critical days for deliveries in excess of delivery point MDQs when authorized overruns have not been scheduled. ANR explains that the proposed nominal UOS penalty will be equal to two times the applicable Rate Schedule ITS maximum rate.<sup>14</sup> In addition, ANR proposes to add clarifying language to each UOS provision that confirms the existing substantial UOS penalty language is applicable only on posted critical days.

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<sup>12</sup> Rate Schedules ETS, STS, FTS-1, FTS-2, FTS-3, and PTS-2.

<sup>13</sup> ANR states that its existing substantial critical-day UOS penalty is equal to the greater of \$10.00 or two times the Spot Price Index for the Service Month, as defined in GT&C Section 6.16 of its Tariff. ANR Filing at 5.

<sup>14</sup> *Id.* (citing *El Paso Nat. Gas Co.*, 140 FERC ¶ 61,148, at P 23 (2012) (“[The pipeline] is permitted, however, to maintain an unauthorized daily overrun rate at two times the 100% load factor IT rate.”); *2012 El Paso*, 139 FERC ¶ 61,096 at P 81 (“The Commission has previously determined that the unauthorized overrun penalties [the pipeline] may impose during non-critical periods may not exceed two times the maximum IT rate . . . .”); *El Paso Nat. Gas Co.*, 125 FERC ¶ 61,309, at P 62 (2008) (*2008 El Paso*) (noting holdings implementing Order No. 637 that “a pipeline may propose a nominal penalty for noncritical periods, not to exceed twice its IT rate, that is sufficient to provide an incentive to nominate overrun volumes, but also takes into account the lessened impact such unauthorized overruns will have on the system” or may retain its existing penalty, subject to waiver “if the unauthorized overrun does not cause operational problems” and rejecting non-critical penalties based on 100% load factor rates, requiring instead non-critical penalties based on the IT rate, limiting them to two times the IT rate); *El Paso Nat. Gas Co.*, 115 FERC ¶ 61,280, at P 27 (2006)).

### **C. Allocation of Deliveries**

13. ANR proposes to clarify the use of the term “excess” in GT&C Section 6.14.1(a)(3)(iii) and “exceed” in GT&C Section 6.14.1(c) by providing that DSPs are applicable to under-deliveries which are in excess of a shipper’s Swing Percentage as well as over-deliveries which exceed a shipper’s Swing Percentage. ANR states that for operating and planning purposes, the effects on ANR’s pipeline system can be equally detrimental whether a shipper under-delivers or over-delivers beyond its Swing Percentage. Therefore, ANR proposes the clarifying language in GT&C Section 6.14.1 in order to provide the proper incentives to all shippers to accurately schedule daily gas requirements, and so that the proposed DSP provisions are consistent throughout ANR’s Tariff. In addition, ANR proposes to replace the term “nominations” with “scheduled quantities” in GT&C Section 6.14.1(c) to accurately reflect the calculation of variance amounts when delivered volumes have been allocated.

### **D. Waiver of Penalties**

14. GT&C Section 6.18.13 currently stipulates that ANR “shall” waive its DSPs and UOS penalties “where the imposition thereof is not necessary to prevent the impairment of reliable service....” ANR argues that this language effectively eliminates ANR’s ability to utilize any type of nominal penalty intended to incentivize shippers to schedule anticipated daily gas requirements accurately, including authorized overrun in those instances where delivery point MDQs may be exceeded.<sup>15</sup>

15. Accordingly, ANR proposes to change the word “shall” to “may” in GT&C Section 6.18.13 to allow ANR, on a not unduly discriminatory basis, to assess nominal penalties when offending shippers either take deliveries outside of their applicable Swing Percentage or do not properly schedule authorized overrun service on non-critical days. ANR argues that without such a change to GT&C Section 6.18.13, it will continue to be unable to assess any type of nominal penalty necessary to incentivize shipper behavior.<sup>16</sup>

16. Lastly, ANR proposes to add a reference to GT&C Section 6.14.1(c) in GT&C Section 6.18.13 so that all shippers that may be assessed DSPs are accordingly eligible for a waiver of such penalties.

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<sup>15</sup> *Id.* at 6.

<sup>16</sup> ANR avers that the clarifications and modifications proposed in its filing do not affect ANR’s obligation to waive substantial penalties assessed on a critical day where shipper’s actions are subsequently determined not to have caused operational harm. ANR asserts that it remains committed to waiving substantial DSPs and UOS penalty charges under such circumstances. *Id.* at 7.

### **E. Crediting of Penalty Revenues**

17. ANR proposes to add a reference to GT&C Section 6.14.1(c) in GT&C Section 6.31(1)(a) so that any DSPs assessed and received by ANR as a result of GT&C Section 6.14.1(c) will be considered “penalty revenues” as that term is used in GT&C Section 6.31 of ANR’s Tariff.

### **II. Public Notice, Interventions, and Responsive Pleadings**

18. Public notice of ANR’s filing was issued on March 2, 2020. Interventions and protests were due as provided in Section 154.210 of the Commission’s regulations.<sup>17</sup> Pursuant to Rule 214,<sup>18</sup> all timely-filed motions to intervene and any unopposed 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.

19. On March 11, 2020, Dynegy Marketing and Trade, LLC (Dynegy), Indicated Shippers,<sup>19</sup> and Sequent Energy Management, L.P. (Sequent) filed protests.<sup>20</sup> On March 11, 2020, Tait Electric Generating Station, LLC (Tait) filed adverse comments requesting that the Commission require ANR to provide explanations on certain issues.<sup>21</sup> Protestors contend that ANR provided no advance notice of these changes and insufficient justification for many of the revisions.<sup>22</sup> Dynegy argues that ANR’s filing should be rejected or, in the alternative, accepted and suspended for the maximum period allowed by law, subject to refund, and set for technical conference. Indicated Shippers request that the Commission reject ANR’s proposed tariff records. Sequent also requests maximum suspension, refunds and a technical conference, while seeking rejection of individual proposals.

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<sup>17</sup> 18 C.F.R. § 154.210 (2019).

<sup>18</sup> 18 C.F.R. § 385.214 (2019).

<sup>19</sup> Indicated Shippers consist of Ascent Resources – Utica, LLC, ConocoPhillips Company, and ExxonMobil Upstream Oil & Gas Company, a division of Exxon Mobil Corporation.

<sup>20</sup> Sequent is a wholly-owned subsidiary of Southern Co. Gas.

<sup>21</sup> Tait supports the Indicated Shippers’ protest.

<sup>22</sup> *E.g.*, Sequent Protest at 4, 7; Dynegy Protest at 4.

20. Dynegey argues that ANR's filing should be rejected or, in the alternative, accepted and suspended for the maximum period allowed by law, subject to refund, and set for technical conference. Dynegey objects to ANR's proposal to depart from its long-standing practice to not impose penalties on non-critical days as lacking an operational justification. Further, Dynegey argues that ANR's proposal is unduly burdensome on shippers such as generators who require flexibility in their scheduling and operations. Dynegey states that "a pipeline may only include transportation penalties in its tariff to the extent necessary to prevent the impairment of reliable service and must provide an operational justification for such penalties."<sup>23</sup>

21. Dynegey requests the Commission reject ANR's proposals for daily scheduling and UOS penalties on non-critical days because ANR has not shown how its proposed penalties for non-critical days are necessary to prevent the impairment of reliable service on its system.<sup>24</sup>

22. Dynegey also argues that ANR's proposal is inconsistent with ANR's acknowledged obligation to waive substantial penalties on critical days in the absence of operational harm,<sup>25</sup> and also inconsistent with its stated purpose "to allow it to impose *nominal* penalties on *non-critical* days, and *not* to change in any way its procedures or requirements for waiving substantial penalties for non-harmful conduct."<sup>26</sup> Dynegey argues that ANR's proposed tariff language is unclear as to what penalties would apply in the event a shipper scheduled deliveries at or near its contractual MDQ and its deliveries subsequently exceeded the MDQ.<sup>27</sup>

23. Indicated Shippers request that the Commission reject ANR's proposed tariff records. Indicated Shippers argue that, while ANR contends that operational integrity has become increasingly challenging over time, ANR failed to support its claim that shippers

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<sup>23</sup> Dynegey Protest at 3 (citing 18 C.F.R. § 284.12(b)(2)(v)(2019) and *ANR Pipeline Co.*, 103 FERC ¶ 61,252, *reh'g denied*, 105 FERC ¶ 61,236 (2003) as noting that the Commission requires "that penalties must be imposed only when necessary to prevent impairment of reliable service" and rejecting proposed imbalance penalties for lack of an operational justification). *See also* Indicated Shippers Protest at 2-3.

<sup>24</sup> Dynegey Protest at 4.

<sup>25</sup> *Id.* at 5 (citing ANR Filing at 7 n.15).

<sup>26</sup> *Id.* (emphasis in original).

<sup>27</sup> *Id.* at 4.



routinely under- or over-delivered scheduled quantities.<sup>28</sup> Indicated Shippers claim that, in the event operational integrity becomes increasingly more challenging, ANR's existing penalty waiver tariff provisions are sufficient to provide relief.<sup>29</sup>

24. Tait supports the protest of Indicated Shippers and requests additional information on declaring critical conditions, as well as the implementation and operational justification for penalizing under-deliveries. Tait questions how ANR will assess the maximum applicable interruptible rate for daily scheduling penalties.<sup>30</sup> Tait notes that ANR's rates are determined on a matrix and asserts that ANR should explain whether the maximum rate will be the highest interruptible rate on the system or whether it will be the highest interruptible rate applicable to the particular shipper's nominated and scheduled volumes. Tait states that, if ANR uses the highest maximum interruptible rate on the system, it should justify the proposal for shippers using only a small portion of the system.<sup>31</sup>

25. Tait questions how ANR could be in an operating condition where both under- and over-deliveries of scheduled quantities would be penalized.<sup>32</sup> Tait theorizes that, while an over- or under-delivery may exacerbate an operational condition, an over- or under-delivery in the direction opposite the operational condition may actually help ANR to better manage its system. Tait states that behavior that ameliorates an operational condition should not be penalized. Finally, Tait requests information as to how ANR will impose an "Extreme Condition" under GT&C Section 6.1.29.<sup>33</sup>

26. Sequent also requests ANR's filing be suspended for the maximum period, subject to refund and the outcome of a technical conference. Sequent faults ANR for failing to identify customer benefits or a specific operational problem to justify its proposal. Sequent states that ANR is well compensated through tariff rates, so it should not complain about the operational demands from full subscription levels. Sequent asserts

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<sup>28</sup> Indicated Shippers Protest at 3.

<sup>29</sup> *Id.*

<sup>30</sup> Tait Comments at 3.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 2-3.

that ANR's proposal "will significantly degrade the quality of ANR's firm transportation services" without offsetting benefits.<sup>34</sup>

27. Sequent also argues that ANR's proposal appears to override existing pre-determined allocation methodologies in shipper contracts, without regard to the public interest standard for contract modification.<sup>35</sup> Sequent asserts that ANR has not supported penalties for daily scheduling variances on over-deliveries during non-critical times. Sequent highlights its claim of a lack of an operational basis and contends that ANR has not provided an adequate basis for a general, system-wide application of non-critical daily scheduling penalties.<sup>36</sup>

28. Sequent questions whether ANR has adequately explained how it will ensure that shippers who are penalized for over-deliveries will not also be assessed daily scheduling penalties for ordinary balancing make-up nominations. Sequent asks that the Commission reject as unsupported ANR's proposal for substantial daily scheduling penalties on critical days equal to unauthorized overrun service penalties (at the greater of \$10.00 or two times the Spot Price Index for the Service Month).<sup>37</sup> Sequent characterizes this as an entirely new daily scheduling penalty on critical days. According to Sequent, ANR failed to support any operational predicate for the proposal or to establish that the penalty is "properly calibrated to address some measurable operational harm."<sup>38</sup>

29. Additionally, Sequent states that it is unclear how ANR can charge a penalty based upon scheduled volumes as opposed to nominations, when ANR, not the shippers, performs the scheduling. According to Sequent, shippers "have no control whatsoever" over what volumes ANR chooses to schedule.<sup>39</sup> Sequent characterizes this as penalizing shippers for ANR's actions and questions whether this can be just and reasonable.<sup>40</sup>

30. Sequent asserts that there is a potential inconsistency in ANR's proposal. Specifically, Sequent asserts that ANR's transmittal states that the new penalty applies to

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<sup>34</sup> Sequent Protest at 4.

<sup>35</sup> *Id.* at 5-6.

<sup>36</sup> *Id.* at 6.

<sup>37</sup> Sequent Protest at 7 (citing, *e.g.*, Rate Schedule FTS-1, section 5.3.3(3)).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 4.

<sup>40</sup> *Id.*

the “scheduled path,” while ANR’s proposed tariff revision indicates that the penalty is based upon the ITS maximum rate “to that Delivery Point.” Sequent notes that it serves load using a portfolio of contracts covering multiple paths and questions how ANR intends to determine the “scheduled path” for the penalty.<sup>41</sup> Sequent questions how ANR can ensure that shippers do not pay multiple penalties on the same volumes of gas, arguing that both daily scheduling and unauthorized overrun penalties may be charged.

31. Finally, Sequent urges the Commission to reject ANR’s proposal to replace the word “shall” with “may” regarding its authority to waive penalties. Sequent contends that ANR’s proposal is overbroad because it would permit ANR to impose and collect penalties that are not needed to maintain reliable service, contrary to Section 284.12(b)(2)(v) of the Commission’s regulations.<sup>42</sup>

32. On March 20, 2020, ANR filed a motion for leave to answer and an answer in response to the protests. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure<sup>43</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept ANR’s answer because it provides information that assisted us in our decision-making process.

33. In its answer, ANR argues that the Commission should reject the protests, deny all relief requested therein, deny the requests for a technical conference, and accept ANR’s proposed revisions to become effective April 1, 2020, as requested.<sup>44</sup>

34. ANR argues that its proposal to implement nominal scheduling and unauthorized overrun penalties for non-critical periods is fully consistent with Commission policy.<sup>45</sup> ANR asserts that the protests ignore that the Commission has long recognized that pipelines may establish scheduling penalties at the maximum interruptible transportation rate for non-critical periods.<sup>46</sup> ANR contends that no showing of actual system harm to justify the imposition of nominal scheduling penalties is required.<sup>47</sup> ANR states that the

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<sup>41</sup> *Id.* at 5.

<sup>42</sup> *Id.* at 8; Dynegy Protest at 5.

<sup>43</sup> 18 C.F.R. § 385.213(a)(2) (2019).

<sup>44</sup> ANR Answer at 3, 13.

<sup>45</sup> *Id.* at 3-5.

<sup>46</sup> *Id.* at 4.

<sup>47</sup> *Id.* at 4, 9.

Commission has held that scheduling variances will not have operational effects on a pipeline during non-critical periods, but nominal penalties in such instances are “intended to provide an incentive for shippers to schedule accurately, and to compensate the pipeline for its lost opportunity costs.”<sup>48</sup> ANR further states that the Commission has held that pipelines may establish nominal penalties for UOS during non-critical periods, not to exceed twice the 100% load factor IT rate, “that is sufficient to provide an incentive to nominate overrun volumes, but also takes into account the lessened impact such unauthorized overruns will have on the system.”<sup>49</sup>

35. Further, ANR argues that protestors’ other objections to ANR’s proposed penalty revisions are unfounded.<sup>50</sup> ANR argues that its proposed critical day scheduling penalty is amply justified.<sup>51</sup> ANR contends that its proposed change to its penalty waiver provision is appropriate and consistent with ANR’s proposed nominal penalties on non-critical days.<sup>52</sup> Finally, ANR argues that Dynegy’s and Sequent’s requests for maximum suspension and a technical conference should be rejected.<sup>53</sup>

### III. Discussion

36. As discussed below, we accept and suspend, subject to refund and paper hearing procedures, the proposed tariff records listed in the Appendix to be effective September 1, 2020. We find that the instant filing raises material issues of fact. Accordingly, we will establish a paper hearing to explore all issues raised by ANR’s filing and the protests, including but not limited to the operational circumstances on ANR’s system that may justify the proposed penalties, the level of the proposed penalties, and the application of the Commission’s waiver of penalties policy.

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<sup>48</sup> *Id.* at 4-5 (citing *2012 El Paso*, 139 FERC ¶ 61,096 at P 82; *Millennium*, 130 FERC ¶ 61,074 at P 20; *Columbia*, 119 FERC ¶ 61,267 at P 29; *Natural*, 103 FERC ¶ 61,174 at P 63).

<sup>49</sup> *Id.* at 5 (citing *2012 El Paso*, 139 FERC ¶ 61,096 at PP 23, 81; *2008 El Paso*, 125 FERC ¶ 61,309 at P 62; *Colorado Interstate Gas Co.*, 122 FERC ¶ 61,256, at P 86 (2008); *Questar Pipeline Co.*, 98 FERC ¶ 61,159, at 61,584 (2002)).

<sup>50</sup> *Id.* at 5-10.

<sup>51</sup> *Id.* at 10-11.

<sup>52</sup> *Id.* at 11-12.

<sup>53</sup> *Id.* at 12-13.

**A. Paper Hearing Procedures**

37. We find that a paper hearing is the most appropriate means to explore the issues.<sup>54</sup> Parties shall file initial briefs to address the issues raised by ANR's proposals within 45 days of the date on which this order is issued. Reply briefs will be due 35 days thereafter.

**B. Suspension**

38. Based upon our review of the filing, we find that the proposed tariff records have not been shown to be just and reasonable, and may be unjust, unreasonable and unduly discriminatory, or otherwise unlawful. Accordingly, we accept and suspend the effectiveness of the proposed tariff records for the period set forth below, subject to refund.

39. The Commission's policy regarding tariff filings is that they generally should be suspended for the maximum period permitted by statute where preliminary review leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.<sup>55</sup> It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.<sup>56</sup> Such circumstances do not exist here. Therefore, we will suspend for the maximum period of five months the proposed tariff records listed in the Appendix, to be effective September 1, 2020, subject to refund, and the outcome of the paper hearing established herein.

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<sup>54</sup> Each party's presentation should separately state the facts and arguments advanced by the party and include any and all exhibits, affidavits, and/or prepared testimony on which the party relies. The statement of facts must include citations to supporting exhibits, affidavits, and/or prepared testimony. All materials must be verified and subscribed as set forth in 18 C.F.R. § 385.2005 (2019).

<sup>55</sup> See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

<sup>56</sup> See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

The Commission orders:

(A) The tariff records in the Appendix are accepted for filing and suspended, to be effective September 1, 2020, subject to refund and the outcome of the paper hearing procedures established herein.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the NGA, particularly Sections 4, 5, 8, 9, and 15 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the NGA (18 C.F.R. Chapter I), a paper hearing shall be held regarding the issues raised by ANR's filing including, but not limited to, those raised in protests and comments made in response to that filing, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## **Appendix**

ANR Pipeline Company  
FERC NGA Gas Tariff  
ANR Tariffs

*Tariff records accepted for filing and suspended, effective September 1, 2020, subject to refund and the outcome of paper hearing procedures:*

[5.1.3 - Rate Sch ETS, Charges, 3.0.0](#)

[5.2.3 - Rate Sch STS, Charges, 2.0.0](#)

[5.3.3 - Rate Sch FTS-1, Charges, 3.0.0](#)

[5.4.3 - Rate Sch FTS-2, Charges, 3.0.0](#)

[5.5.3 - Rate Sch FTS-3, Charges, 3.0.0](#)

[5.8 - Rate Schedules, Rate Schedule ITS, 2.0.0](#)

[5.17.3 - Rate Sch PTS-2, Charges, 2.0.0](#)

[6.14.1 - GT&C, Allocation of Deliveries, 1.0.0](#)

[6.18.13 - GT&C, Waiver of Penalties, 1.0.0](#)

[6.31 - GT&C, Crediting of Penalty Revenues, 1.0.0](#)