

101 FERC ¶ 61, 123
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

ANR Pipeline Company

Docket No. RP02-335-000
and RP02-335-001

ORDER AFTER TECHNICAL CONFERENCE ACCEPTING TARIFF SHEET
AND ESTABLISHING A HEARING AND SETTLEMENT PROCEDURES

(Issued October 31, 2002)

1. On May 31, 2002 the Commission issued an order,¹ accepting and suspending for five months, ANR Pipeline Company's (ANR) annual cashout filing, to become effective the earlier of November 1, 2002 or on a date specified in an order issued after the technical conference. The Commission directed its staff to convene the technical conference to explore the issues raised by ANR's proposal and in the protests and comments of the parties concerning the workings of the cashout mechanism and the fairness of the associated surcharge rate. As discussed below, the Commission will accept ANR's filing to be effective November 1, 2002 and establish a hearing to correct deficiencies in ANR's cashout mechanism. The Commission will however hold the hearing in abeyance pending settlement procedures. This decision benefits the public by allowing for recovery of ANR's cashout costs consistent with its tariff, but will require the cashout mechanism to be revised so that its future operation will be just and reasonable.

Background

2. On May 1, 2002, pursuant to Section 15.5 of the General Terms and Conditions (GT&C) of its tariff, ANR filed its annual cashout price surcharge. The filing reflected an increase in the currently effective surcharge from \$0.1508 per Dth to a rate of \$0.4464 per Dth which is computed to collect a balance of almost \$6.9 million in the cashout

¹ ANR Pipeline Co., 99 FERC ¶ 61,183 (2002).

account. The tariff provides for an annual calculation, on a system-wide basis, of the annual gross revenue balance (positive or negative) resulting from its cashout program. The annual period at issue here encompasses January 2001 through December 2001. Under ANR's cashout mechanism, both excess quantities and deficient quantities² are calculated after any imbalance trading has occurred pursuant to Section 15.6 of ANR's GT&C.³ The surcharge is paid by the shippers who are out of balance.

3. In its transmittal letter, ANR stated that the increase in the proposed surcharge is due to the high level of Shipper Excess Quantities (7.9 MMDth) that it was required to purchase in 2001. ANR stated that this activity occurred primarily in the first eight months of 2001 when ANR made purchases of about 6.6 MMDth of Shipper Excess Quantities. During this period the applicable spot price indices ranged from \$7.98 per Dth (in January 2001), falling to \$2.34 per Dth (in August 2001), with spot prices not falling below \$4.00 per Dth until June 2001. While Shipper Deficient Quantities totaled 7.5 MMDth for 2001, 4.2 MMDth of the Shipper Deficient Quantities occurred during the last five months of the year when the applicable spot prices were less than \$3.00 per Dth.

4. The filing was protested by the Process Gas Consumers Group (PGC), ProLiance Energy, LLC (ProLiance), and the Indicated Shippers.⁴ The parties requested a hearing or a technical conference to: (1) address why the cashout price surcharge increased so substantially from last year's price (\$0.1508 to \$0.4464), (2) obtain evidence related to the increase in the cashout price surcharge in order to determine why the increase occurred, who should pay for it and how to prevent its recurrence, (3) address questions

²Shipper Excess Quantities are quantities ANR buys from shippers when monthly receipts are greater than monthly deliveries, while deficient quantities are quantities ANR sells shippers when monthly deliveries are greater than receipts.

³The proposed surcharge rate reflects a balance to be collected of \$6,884,219 divided by actual cashout volumes in 2001 of 15,421,013 dekatherms (Dth). An additional \$2,788,174 of costs (ten percent of gross receipts) are being deferred to the 2003 annual redetermination, pursuant to the cashout mechanism's operation. Projected and underrecovered interest of \$847,272 makes up a significant portion of the balance to be recovered, as does the amount, \$3,822,710, carried forward from the prior annual cashout price surcharge filing in Docket No. RP01-392-000.

⁴ Indicated Shippers consists of Chevron U.S.A., Dynegy Marketing and Trade, Exxon Mobil Corporation, Hunt Oil Company and Shell Offshore Inc.

concerning ANR's operational and business practices and to review ANR's gas purchasing and system management purchases; (4) explore whether ANR's cashout price surcharge has a disproportionate impact on PTR (plant thermal reduction) shippers and (5) explore Indicated Shippers' proposed modifications relating to in-kind balancing and problems associated with notification of imbalances to PTR shippers.

5. The Commission accepted and suspended, subject to refund, ANR's filing until the earlier of five months or the outcome of a technical conference. The Commission found that the protestors had raised serious questions about the magnitude of the increase in ANR's cashout surcharge price and other issues about the filing which warranted further discussion, including whether ANR's current cash-out mechanism contains flaws which may be leading to some gaming of ANR's system. Therefore, the Commission directed its staff to hold a technical conference to address the parties' concerns.

6. The technical conference was conducted on July 18, 2002. After the conference, initial and reply comments were filed by ANR and Indicated Shippers. In addition, reply comments were filed by Rochester Gas and Electric Corporation (RG&E) and Wisconsin Distributor Group (WDG).

Comments of the Parties

General Comments

7. Generally, in its initial comments, ANR states that it has shown that its cashout mechanism has been operated in compliance with its approved tariff. Therefore, ANR argues that its cashout surcharge should be permitted to go into effect on November 1, 2002, at the end of the suspension period. ANR also states that it is willing to explore modifications to the cashout mechanism, to be implemented prospectively, with interested shippers to address concerns that are currently unresolved. Indicated Shippers' initial comments focused on the fact that PTR shippers⁵ do not have the same opportunities to avoid imbalances as do other shippers and that PTR shippers do not have actual data on which they can reasonably rely in making nominations for transportation service. Indicated Shippers would like a new cashout mechanism for PTR shippers to be developed that would provide such shippers a reasonable means of avoiding imbalances,

⁵PTR shippers are shippers whose volumes pass through a processing plant where volumes are removed (Plant Thermal Reduction) in accordance with the procedures set forth in ANR's tariff at Section 5.2(b) of the General Terms and Conditions.

permit a trading procedure allowing for in-kind balancing, and ultimately require any remaining PTR balance to be cashed out. Indicated Shippers also suggest that past cashout underrecoveries be collected through a surcharge on all transportation volumes.

8. ANR notes that a significant amount of the discussion at the technical conference related to the imposition of the cashout surcharge on transportation of PTR (plant thermal reduction or plant shrinkage) volumes from the wellhead to various processing plants on the ANR system. A review of ANR's filing shows that virtually all of the cashout imbalances on ANR's system during 2001 occurred at or upstream of headstations on ANR's system and much of those imbalances were associated with PTR transportation volumes. ANR acknowledges that PTR shippers can be disadvantaged by the untimely receipt of final measurement volumes from plant operators. Shippers estimate their PTR transportation by multiplying the estimate of plant shrinkage provided by the plant operator times the estimated production. While ANR provides the shipper with updated information regarding the actual production, the plant operator does not provide actual shrinkage percentages until the month after the production month. According to ANR, while shippers are aware throughout the month of their actual production and the actual PTR volumes received by ANR, they cannot determine their actual deliveries until they are notified of the actual shrinkage percentage by the plant when they get their invoice the following month.

9. ANR is aware that there are occasions when plant operators revise actual shrinkage percentages allocated to a shipper's production later than the month following the production month, in which case no additional trading is permitted. ANR states that it is in discussions with Indicated Shippers in an effort to determine what measures could be taken to address this issue. Nevertheless, ANR states an appropriate solution to this issue will require the participation and cooperation of plant operators, and more time and effort by all parties. However, until the mechanism is changed, ANR believes that PTR volumes are transportation volumes on its system that create imbalances and that they ought to bear their share of the costs associated with resolving those imbalances.

10. ANR states that while Indicated Shippers appear to be seeking an order in this proceeding directing the Commission to modify the tariff's cashout mechanism, ANR believes that no substantial evidence has been presented showing that the cashout mechanism is producing unjust and unreasonable results and Indicated Shippers have not shown how their proposed tariff modifications would enable ANR to recover costs that have been properly incurred pursuant to an approved tariff mechanism. ANR asserts that no party contests that the costs underlying the surcharge were legitimately incurred and the surcharge properly calculated. ANR believes that an attempt to obtain prospective

changes in its tariff should not hinder ANR's recovery of costs properly incurred under its approved tariff mechanism.

Proposal to Revise Cashout Mechanism For PTR Imbalances

11. Indicated Shippers propose the adoption of a new cashout mechanism for PTR imbalances and the use of a surcharge on all transportation volumes to clear out ANR's carry-forward balance. Indicated Shippers propose that PTR shippers be permitted one month after being informed of an imbalance to (a) provide or receive in-kind volumes or (b) trade such imbalances with offsetting PTR imbalances or other gas imbalances in the month in which the PTR imbalance is posted. After the one-month period to reduce or eliminate the PTR imbalance, Indicated Shippers propose that any remaining PTR imbalance would be cashed-out under ANR's tariff. With declining gas imbalances, Indicated Shippers believe it is appropriate to give PTR shippers the option of in-kind resolution of imbalances, in addition to allowing PTR imbalance trading since the possibility exists that there would be insufficient offsetting imbalances to permit full resolution through trading. Indicated Shippers also suggest that the procedures for informing PTR shippers of imbalances and estimated imbalances need to be significantly improved.

12. ANR responds that it is committed to working with its shippers in an effort to improve its cashout mechanism. ANR believes that Indicated Shippers' concern about obtaining final allocation information in connection with nominations to plants for the transportation of process shrinkage reimbursement, and its suggestion in its protest that ANR should permit "PTR imbalances to be balanced and traded against imbalances in the month in which PTR imbalances are made known" has merit. ANR states that a second suggestion made in its protest that ANR consider some type of in-kind imbalance resolution as an alternative to cashout of PTR imbalances is likewise something that ANR is willing to consider.

Proposal to Recover Past Costs

13. Indicated Shippers propose that ANR should recover its carry forward cashout loss through a three-year surcharge on all transportation volumes, since these costs relate to system operations. ANR responds that, while it is willing to make changes to its cashout mechanism, it cannot be expected to agree to changes in the mechanism that will

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expose it to under-recovery of its legitimate costs incurred in the operation of its imbalance management/cashout program. ANR states that any changes to the mechanism must enjoy the support of all shippers. ANR explains that some of its customers do not incur cashout surcharges because their services are balanced through the separate no-notice delivery service they have contracted for and that some of these no-notice customers are concerned that an attempt may be made to recover a portion of the cashout balance from them.

14. RG&E and WDG oppose Indicated Shippers' proposal that past cashout underrecoveries be recovered from all transportation customers via a surcharge. Both parties object to this proposal because they state they maintain their contracts in balance and their use of the system does not cause ANR to sell or purchase the gas which gives rise to the incurrence of such costs. In support of their position, the parties point to the principle that cost responsibility follows cost causation. They argue that shippers that do not cause the costs associated with unrecovered imbalance costs should not be burdened with the associated cost responsibility.

ANR's Data and Workpapers

15. Indicated Shippers also asked ANR to respond to questions about specific items contained in its workpapers included as Attachments 1-6 to the May 1, 2002 filing. The questions related to the prices ANR paid for its gas purchases, two transactions for which no cashout revenues are shown and other apparent adjustments to its cashout volumes and prices such that actual cashout purchases in excess of net cashout revenues are not readily apparent.

16. In its reply comments, ANR addressed the questions raised by Indicated Shippers concerning its workpapers and contested the position of Indicated Shippers. ANR responded to the three questions raised by Indicated Shippers about its workpapers. Indicated Shippers had questioned why ANR had paid more in some months for gas than the applicable cashout price (inclusive of the surcharge). ANR in its response notes that the amount involved were quite small, in comparison to prior years, as the purchases of gas questioned by Indicated Shippers amounted to only 166,634 Dth of gas at a cost of \$670,086. With respect to the price it paid to purchase such gas being at times higher than the cashout price, ANR states that the two prices are determined by different methodologies and such differences are to be expected. The monthly cashout price shown in workpapers reflects the weighted average of index prices of both gas bought and sold at the various locations where imbalances occur, in accordance with the tariff mechanism. ANR's actual gas purchases, on the other hand, reflect index prices pursuant to the supply contracts under which ANR purchased the gas. ANR does not accept the position of the Indicated Shippers that a purchase price determined by contract would be less than a weighted average of prices of both purchases and sales at the particular locations where imbalances occur.

Discussion

17. The Commission has reviewed the initial and reply comments of the parties. We find that ANR has shown that its proposed cashout price surcharge was calculated consistent with its approved tariff. Following the technical conference, Indicated Shippers raised questions about a relatively small amount of the gas purchase prices and volumes used to determine the surcharge. The Commission finds that ANR's responses described above adequately address the issues raised by Indicated Shippers. Therefore, we will permit its cashout surcharge to go into effect on November 1, 2002, at the end of the suspension period, as proposed.

18. However, the Commission is concerned with the workings of ANR's cashout mechanism. We find that the current mechanism is fairly complex, and its past operation indicates the current mechanism is unjust and unreasonable in at least two respects. First, the parties appear to agree that the current mechanism does not give PTR shippers an adequate opportunity to resolve their imbalances. Indicated Shippers has proposed changes to address this problem and ANR has stated a willingness to consider such changes. Although it appears that this aspect requires revision we do not have sufficient facts before us to impose changes to the mechanism. Therefore, we believe it appropriate to give interested parties an opportunity to negotiate changes to the mechanism to assist shippers that will be mutually agreeable, rather than have the Commission impose changes to the mechanism.

19. Second, the mechanism has resulted in wide swings in the surcharge from year to year, partly because of significant accumulated cashout losses being carried forward in some years, but not others.

20. The carryforward provision in the mechanism (Section 15.5(b)(1)) defers the collection of significant costs without regard to the level of costs to be recovered or the resulting surcharge level. As a result, this provision can defer costs (which likely could have been collected during an annual period because the amount of undercollections to be recovered were small) to the subsequent annual period when the level of costs (excluding the carryforward costs) and the resulting surcharge rate might be much greater. The Commission believes that the addition of the carryforward amount can increase the surcharge and therefore exacerbate the problem of cost recovery.⁶ We note

⁶The carryforward amount is calculated as ten percent of the gross receipts (gas
(continued...))

that in 1997 the ending balance to be recovered before costs were carried over was \$5.2 million. After \$2.8 million was carried forward to the next year, the balance to be recovered was only \$2.4 million and the resulting surcharge was a fairly low \$0.1211 per MMBtu for the 1998 surcharge. In subsequent years (1998 through 2001), the carryforward amounts were \$1.5 million, \$1.4 million, \$2.9 million, and \$2.8 million, respectively. While the amounts may roughly balance out in many years; that is the carryforward amount for the current year may be approximately the same as the carryforward amount for the prior year, this is not always the case.

21. In light of these issues and the issues explored at the technical conference and set forth in the comments of the parties, the Commission finds that ANR's existing cashout mechanism is not producing just and reasonable results. We believe that a well-functioning cashout mechanism should be capable of giving all shippers behaving responsibly a fair opportunity to avoid such payments. When that objective is not achieved, the mechanism should be capable of assessing reasonably incurred costs to those shippers that have incurred them and the accounts should be cleared out as expeditiously as possible. ANR's mechanism does not appear to meet these goals. However, we do not have sufficient facts before us now to devise a just and reasonable mechanism pursuant to section 5 of the Natural Gas Act (NGA) that does reach these objectives. Consequently, we will set these matters for hearing. Based on our review of the comments already filed in this case, we believe that ANR and its shippers are willing to discuss ways to improve the mechanism and propose adjustments to it. To assist the parties in their efforts, the Commission will hold the hearing in abeyance and direct the Chief Administrative Law Judge to appoint a settlement judge, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁷

The Commission orders:

(A) ANR's Thirty-Third Revised Sheet No. 17, to FERC Gas Tariff, Second Revised Volume No. 1, is accepted to be effective November 1, 2002.

(B) Pursuant to the authority of the NGA, particularly section 5 thereof, a hearing will be held in Docket Nos. RP02-335-000 and RP02-335-001 concerning the lawfulness

⁶(...continued)
sold to shippers) for the year and is not related to the size of the ending balance, other than the carryforward only applies if the cashout imbalance is negative.

⁷18 C.F.R. § 385.603 (2002).

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of ANR's cashout mechanism as contained in its FERC Gas Tariff, as discussed in the body of this order. However, the hearing will be held in abeyance while the parties attempt to settle this matter, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603, the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. To the extent consistent with the order, the designated settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

(D) Within ninety (90) days of the date of this order, the settlement judge shall issue a report to the Commission and the Chief Judge on the status of the settlement discussions. The settlement judge shall issue a report at least every sixty (60) days thereafter, apprising the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If the settlement discussions fail, a presiding administrative law judge, to be selected by the Chief Judge, shall convene a prehearing conference in these proceedings, to be held within approximately fifteen (15) days of the date of the settlement judge's report to the Commission and the Chief Judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.