

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
103 FERC ¶ 61,065

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

ANR Pipeline Company

Docket Nos. RP02-335-001

ORDER ON REHEARING

(Issued April 15, 2003)

1. On October 31, 2002, in an order issued after a technical conference (October 31 order), the Commission found that ANR Pipeline Company's (ANR) proposed annual cashout surcharge for the year commencing November 1, 2002, was calculated consistent with its approved tariff. However, the Commission established a hearing and settlement procedures to consider changes to the tariff under Section 5 of the Natural Gas Act (NGA).¹ Indicated Shippers seeks rehearing of the decision approving ANR's cashout surcharge of \$0.4464 and asks the Commission to keep ANR's previous surcharge of \$0.1508 in effect pending the outcome of the hearing. Alternatively, ANR requests the Commission to clarify that the proposed surcharge is being collected subject to refund. As discussed below, the Commission denies rehearing. This decision benefits the public because it allows ANR to recover its cashout costs consistent with its tariff.

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 then effective surcharge from \$0.1508 per dekatherm (dth) to \$0.4464 per dth. The tariff provides for an annual calculation, on a system wide basis, of the annual gross revenue balance (positive or negative) resulting from ANR's cashout program. The annual period at issue here encompasses January 2001 through December 2001. Under ANR's cashout mechanism, both excess quantities and deficient quantities are calculated after any imbalance trading has occurred pursuant to Section 15.6 of

¹ANR Pipeline Co., 101 FERC ¶ 61,123 (2002).

ANR's GT&C. The surcharge is paid by the shippers who are out of balance as a component of the cashout price. The filing was protested.

3. On May 31, 2002, the Commission accepted and suspended ANR's annual cashout filing for five months, to become effective the earlier of November 1, 2002, or on a date specified in an order issued after the technical conference (May 31 order).² After considering the parties' comments filed after the technical conference, the Commission found ANR had shown that its proposed cashout price surcharge was calculated consistently with its approved tariff. Therefore, we permitted ANR's cashout surcharge to go into effect on November 1, 2002, at the end of the suspension period.

4. However, the Commission found 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 Commission noted that the mechanism appeared flawed because it does not give PTR (plant thermal reduction) shippers an adequate opportunity to resolve their imbalances. Second, we noted that ANR's cashout 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. In addition, we stated that the mechanism's carryforward provision needs to be more sensitive to the balance to be recovered and the magnitude of the resulting surcharge. Accordingly, the Commission found that ANR's existing cashout mechanism is not producing just and reasonable results. However, the Commission stated that it did not have sufficient facts before it to devise a just and reasonable mechanism under Section 5 of the NGA. Therefore, the Commission set these matters for hearing before an Administrative Law Judge (ALJ). Since ANR and the parties were willing to negotiate changes to the mechanism to address these concerns, we held the hearing in abeyance and directed the Chief ALJ to appoint a settlement judge. We required the settlement judge to report on the status of the settlement negotiations within 90 days, and every 60 days thereafter.³

Request for Rehearing

5. Indicated Shippers request the Commission grant rehearing and reject ANR's proposed cashout surcharge of \$0.4464 and instead require ANR to keep in effect its

²ANR Pipeline Co., 99 FERC ¶ 61,183 (2002).

³In the status report, on March 4, 2003, the settlement judge informed the Commission that the parties are moving forward and would hold another settlement conference on March 6 and 7. Another status report was filed on April 3, 2003.

previously effective surcharge of \$0.1508 until a new just and reasonable surcharge is derived as a result of the settlement process and/or the hearing procedures established by the Commission in this proceeding. In the alternative, Indicated Shippers seek clarification that the \$0.4464 surcharge is being collected subject to refund, with an effective refund date of November 1, 2002.

6. In support of this request, Indicated Shippers argue the Commission erred by permitting ANR to implement a proposed cashout surcharge of \$0.4464/dth despite finding that the current cashout mechanism that was used in developing the proposed surcharge is unjust and unreasonable and is not producing just and reasonable results. Indicated Shippers contend that, once the Commission determined ANR's cashout mechanism was unjust and unreasonable in at least two respects and that the mechanism resulted in a surcharge that is not just and reasonable, the Commission had no choice but to immediately reject the surcharge. Indicated Shippers argue that allowing the surcharge to go into effect imposes unjust and unreasonable rates on shippers and is therefore inconsistent with the Commission's duty to provide a "complete, permanent and effective bond of protection from excessive rates and charges." Indicated Shippers also argue that the Commission's failure to reject ANR's proposed surcharge is inconsistent with holdings in other cases when the Commission finds that a filing is unjust and unreasonable and rejects the filing.⁴

7. The Commission denies rehearing. ANR is implementing its proposed cashout surcharge pursuant to a previously approved provision in its tariff. In the October 31 order, the Commission held that ANR had correctly calculated the proposed surcharge consistent with the existing tariff provision. Indicated Shippers does not contest that holding on rehearing, but argues only that the surcharge should be rejected because the tariff provision itself is unjust and unreasonable. However, ANR is entitled to continue recovering the rates provided for in its approved tariff until the Commission acts under NGA Section 5 to fix the just and reasonable rate "to be thereafter observed." While the Commission believes that ANR's cashout mechanism is producing unjust and unreasonable results, we do not yet have sufficient information to determine a just and reasonable replacement cashout mechanism. Nor does Indicated Shippers on rehearing suggest we should at this time determine the just and reasonable cashout mechanism. In these circumstances, ANR must be permitted to implement the rates provided for in its existing tariff. Since any modification in these rates, as a result of this proceeding, would occur pursuant to NGA Section 5, there can be no refund. The Northwest and El Paso

⁴Indicated Shipper Rehearing at 5 (citing to Northwest Pipeline Corp., 96 FERC ¶ 61,128, El Paso Natural Gas Company, 97 FERC ¶ 61,265).

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cases relied on by Indicated Shippers⁵ are distinguishable since they involved pipeline proposals under NGA Section 4 to change the pipeline's existing tariff provisions.

The Commission orders:

Indicated Shipper's request for rehearing is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁵Id.