

112 FERC ¶ 61,286
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeem G. Kelly.

ANR Pipeline Company

Docket Nos. RP02-335-005 and
RP02-335-006

ORDER ON COMPLIANCE FILING, CLARIFICATION AND REHEARING

(Issued September 15, 2005)

1. On May 19, 2005, in compliance with the Commission's directives in an April 20, 2005 Order on Rehearing and Compliance Filing (April 20th Order),¹ ANR Pipeline Company (ANR) filed tariff sheets² to modify its existing cashout mechanism. On the same date, ANR also filed a request for clarification, or in the alternative a request for rehearing, of the April 20th Order. In the April 20th Order, the Commission generally denied rehearing but required ANR to file, among other things, revised tariff provisions to address proposed tariff changes concerning plant thermal reduction (PTR) shippers. As more fully discussed below, the Commission grants ANR's requested clarification and accepts the compliance filing.

I. Background

2. Sections 15 and 16 of ANR's GT&C provides for the pipeline to "cash out" its shippers' net monthly imbalances by either, in effect, (1) selling gas to shippers who took more gas from the system than they delivered for transportation, thereby incurring a "negative" imbalance, or (2) buying gas from shippers who took less gas from the system than they delivered to it, thereby incurring a "positive" imbalance. These sales and purchases take place at index prices provided for in the tariff. In addition, the index prices are adjusted, or "tiered," so that the price which shippers with negative imbalances must pay to ANR increases above 100 percent the larger the negative imbalance, and the price ANR pays to shippers with positive imbalances decreases below 100 percent the larger the positive imbalance.³

¹ *ANR Pipeline Co.*, 111 FERC ¶ 61,113 (2005).

² *See* Appendix.

³ *Id.* at 65,024 and note 1 (detailing the tiered pricing).

3. Before the cashout takes place, each shipper is given the opportunity to cure its net monthly imbalance by trading that imbalance with a shipper who has an imbalance in the opposite direction. For example, a shipper who has a negative imbalance may agree with a shipper who has a positive imbalance to set off the two imbalances. The opportunity to trade imbalances occurs in the month following the month in which the imbalance occurs. If, after the trading period is over, the shipper still has an imbalance, then it must cash out the imbalance.

4. In this proceeding, the Commission determined that ANR's then existing tariff mechanism for cashing out shipper imbalances was not producing just and reasonable results and established a hearing, pursuant to section 5 of the Natural Gas Act (NGA), to determine a revised just and reasonable cashout mechanism.⁴ Among other things, the Commission was concerned that ANR's cashout mechanism did not give PTR shippers an adequate opportunity to resolve their imbalances. PTR shippers (typically producers) are shippers who contract with processing plants to remove liquefiable hydrocarbons from the gas they have transported on ANR's system. There are four processing plants in the Southeast production area on ANR's system. Although the processing plants are located on ANR's system, they are not owned by ANR. ANR has a contract with each of these plants that governs the processing of gas that has been committed to the plant by ANR's shippers.

5. ANR transports the PTR shippers' gas to the processing plants, where the liquefiabiles are removed and the gas is then reinjected into ANR's pipeline for transportation to its ultimate destination. When liquefiabiles are extracted from the gas stream, the heating content of the gas is reduced (*i.e.*, plant thermal reduction). This "plant shrinkage" must be made up by the shipper through nominating additional gas to ANR. Therefore, ANR requires that, whenever gas is processed, each PTR shipper must enter into a separate "Associated Liquefiabiles Agreement" for interruptible transportation service under ANR's Rate Schedule ITS, which requires the shipper to nominate additional make-up gas to replace the shrinkage that took place at the processing plant. The PTR shipper makes these nominations of PTR make-up based upon its production times the estimated shrinkage (plant thermal loss) at the plant. However, the plant operator may not provide final figures for the plant thermal loss until 45 days or more after the end of the month in which the processing took place. As a result, a PTR shipper may not know the exact amount of any imbalance it incurred during a particular month until the middle of the second month after the imbalance took place or later.

6. The Commission was concerned that this makes it difficult for PTR shippers to resolve their imbalances. Specifically, we were concerned that it could be difficult for PTR shippers to trade imbalances, since ANR's tariff generally required such trading to take place in the month immediately following the month in which the imbalances

⁴ *ANR Pipeline Co.*, 103 FERC ¶ 61,065 (April 15, 2003).

occurred, before the PTR shipper would finally know the amount, if any, of its imbalance. The prior period adjustment made by the plant operator in the second month following the month in which the imbalance occurred would then put the PTR shipper out of balance and there would be no opportunity to cure that imbalance through trading.

7. In a November 3, 2004 Order (November 3 Order)⁵, the Commission found that this problem had been resolved by ANR's revision to section 15.6(i) of its GT&C in a separate proceeding in Docket No. RP01-612-000,⁶ concerning the *pro forma* agreement for Associated Liquefiabiles. Revised section 15.6(i) allows shippers during each monthly trading period to trade not only the net monthly imbalances they incurred during the immediately preceding month but also any imbalances arising from prior period adjustments related to any previous month. Thus, PTR shippers may trade imbalances after learning of a change in their imbalance activity, even if the imbalance to which the related adjustment occurred more than one month before the adjustment.

8. After further considering this issue in the April 20th Order, the Commission on rehearing found that ANR's tariff change giving PTR shippers an opportunity to trade imbalances arising from past period adjustments did not go far enough to address the problems faced by PTR shippers who incur imbalances as a result of prior period adjustments. The Commission pointed out that ANR only requires net monthly imbalances to be cashed out. As a result, shippers need not cash out imbalances incurred during the course of a month, so long as they bring themselves into balance by the end of the month. Thus, if a shipper is out of balance on a net basis toward the end of the month, the shipper may correct that net imbalance by incurring offsetting imbalances at the end of the month. This, in essence, gives shippers a window within which to make up their imbalances on an in-kind basis before they are subject to cashout. Therefore, the Commission held that PTR shippers should be offered a similar opportunity to resolve imbalances which arise as a result of prior period adjustments on an in-kind basis during the month in which the PTR shippers receive the prior period adjustment. In other words, any prior period adjustment a PTR shipper receives during a month should be treated in the same manner as any other daily imbalance that shippers incur with respect to gas actually flowing during that month.

9. The Commission stated that, with this change, PTR shippers would have two opportunities to resolve imbalances arising from prior period adjustments before being required to cash them out pursuant to ANR's high/low weekly index price. First, a PTR shipper would be able to resolve the imbalance on an in-kind basis by incurring an offsetting imbalance during the remainder of the month in which it is informed of the prior period adjustment. Second, it would have an opportunity to trade that imbalance

⁵ *ANR Pipeline Co.*, 109 FERC ¶ 61,138 (2004).

⁶ 101 FERC ¶ 61,375 (2002).

during the monthly trading period in the month after the prior period adjustment was received. In this way, PTR shippers would have the same ability to resolve their imbalances without having to cash them out, as ANR's shippers have with respect to all other imbalances.

10. The April 20th Order also accepted ANR's filing to comply with the November 3 Order and accepted, subject to condition, a buydown proposal of ANR, although it was a proposal that was outside of the compliance obligation. The Commission required ANR to submit tariff language concerning its buydown proposal for review.

11. On May 19, 2005, ANR submitted both a filing to comply with the April 20th Order and a request for clarification, or in the alternative rehearing, of that order. In order to permit PTR shippers to resolve prior period adjustment imbalances on an in-kind basis during the month the prior period adjustment is received, ANR, in its compliance filing, proposes to revise section 15.6(i) of its GT&C to allow both PTR shippers and non-PTR shippers to net imbalances created by prior period adjustments during the month the prior period adjustment is received and trade such imbalances during the following month's trading period. ANR also pointed out that it currently exempts PTR shippers from the tiering structure of cashout mechanism, because under the existing tariff they cannot net imbalances resulting from prior period adjustments. However, with the change directed by the April 20th Order, ANR states PTR shippers will now have the same ability as other shippers to net imbalances during the month. Therefore, it proposes to eliminate the exemption of PTR shippers from the tiering of the cashout price. Finally, ANR proposes to include a new section 15.7 to implement its buydown proposal to resolve its historical gas deficiency. ANR requests a May 1, 2005 effective date for its compliance filing. In its request for clarification or rehearing, ANR stated that, if the Commission does not accept its proposal to subject the PTR shippers to the tiering of their cashout prices, ANR seeks rehearing of the April 20th Order's requirement that it allow in-kind make up of prior period adjustments during the month in which the prior period adjustment is received.

12. Public notice of the compliance filing was issued, allowing for protests to be filed as provided in section 154.210 of the Commission's regulations. Exxon Mobil filed a protest and request for clarification and Indicated Shippers filed a request to permit them to file a late protest to the compliance filing. On June 13, 2005, ANR filed an Answer to the protests and request for clarification, which among other things, clarifies and modifies its proposed tariff provisions to provide that imbalances created by prior period adjustments can be resolved on an in-kind basis during the month.⁷ While the Commission's rules of practice and procedure generally prohibit answers to protests or

⁷ On June 15, 2005, Exxon Mobil withdrew its protest and request for clarification concerning the in-kind issue but not its protest concerning the merits of the tiering issue.

answers, pursuant to Rule 213 of the Commission's regulations,⁸ the Commission will accept ANR's Answer in this proceeding to allow a better understanding and clarification of the issues which are discussed below.

II. Discussion

A. Request for Clarification or Rehearing

13. In its request for clarification or rehearing, ANR requests that the Commission clarify that, in its filing to comply with the April 20th Order, ANR may make all the tariff changes that it has proposed in that filing, including the changes which the April 20th Order did not expressly require. ANR contends that at the hearing in this case no party proposed the tariff change which the April 20th Order requires – that ANR treat a prior period adjustment received during a particular month in the same manner as any daily imbalances that actually occur during that month. ANR states that, as a result, it did not have an opportunity at the hearing to propose related tariff changes which it believes should be made, if the specific change required by the April 20th Order is made. ANR states that, if the Commission does not grant the requested clarification, it seeks rehearing of the April 20th Order on the ground that the record developed at the hearing does not support requiring ANR to make the specific change required by the April 20th Order without also making the accompanying changes that ANR proposes in its compliance filing.

14. The Commission grants ANR's requested clarification, and accordingly dismisses its rehearing request as moot. The Commission believes that, in the circumstances of this case, it is appropriate to permit ANR to propose in its compliance filing changes to its cashout mechanism that it contends are related to the specific tariff change required by the April 20th Order. Moreover, for the reasons discussed in the next section, the Commission is accepting all the tariff changes which ANR has proposed in its compliance filing, with the further changes ANR has agreed to in its answer to the protests of the compliance filing.

B. Compliance Filing

15. The protests to ANR's compliance filing raise several issues concerning the mechanics of how shippers will net imbalances and trade imbalances under the revised tariff language proposed by ANR. The protests also object to ANR's proposal to subject PTR shippers to tiering of the cashout price. These issues are discussed below.

⁸ 18 C.F.R. § 385.213(a)(2) (2005).

1. Netting

16. In section 15.6 of its GT&C, ANR proposes, as clarified in its Answer, to allow all shippers, including non-PTR as well as PTR shippers, to net imbalances within the same “Operational Impact Areas” on and across Agreements at the close of each Service Month, including any prior period adjustment volumes for previous Service Months. Any imbalances arising as a result of prior period adjustment volumes may be resolved by shippers on an in-kind basis through nominations during the Service Month in which the prior period adjustment is received by the shipper. In its May 31, 2005 protest and request for clarification, Exxon Mobil asked the Commission to require ANR to clarify that this provision will permit PTR shippers who receive a prior period adjustment during a month to resolve any imbalance caused by that adjustment by making in-kind nominations during the remainder of the month in question. Exxon Mobil also asks ANR to explain the mechanics of how the in-kind make-up option will actually work in practice.

17. In its Answer, ANR states that it has agreed with Exxon Mobil on revisions to its tariff to clarify that imbalances created by prior period adjustments can be resolved on an in-kind basis during the month. ANR attached *pro forma* tariff sheets to its Answer to address this concern. ANR states that in its compliance filing it proposed changes to allow PTR shippers to resolve imbalances created by prior period adjustments by netting such imbalances against other imbalances during the remainder of the month. ANR explains that allowing the netting of imbalances effectively allows all shippers to resolve imbalances created by prior period adjustments on an in-kind basis by creating an offsetting imbalance during the remainder of the month. To address Exxon Mobil’s concern that ANR make it clear that PTR imbalances can be made up in-kind and to incorporate other clarifying changes, ANR proposes to add language to its tariff that states that “[a]ny imbalances arising as a result of prior period adjustment volumes may be resolved by Shipper on an in-kind basis through nominations during the service Month in which the prior period adjustment is received by the Shipper.”⁹

18. On June 15, 2005, Exxon Mobil withdrew its protest and request for clarification concerning the ability to resolve imbalances resulting from prior period adjustments on an in-kind basis, stating that it was satisfied with ANR’s proposal in its answer to address this issue. The Commission accepts ANR’s proposal in its Answer to revise its tariff by clarifying that imbalances created by prior period adjustments can be resolved on an in-kind basis during the month.

19. In their June 2, 2005 protest, Indicated Shippers object to the timing provided to PTR shippers to net their prior period adjustments. Indicated Shippers argue that ANR’s

⁹ ANR Answer at 4 (*citing* proposed section 15.6(b)).

netting provision as currently proposed only allows PTR shippers to net their imbalances during the current production month in which the PTR shipper receives notice of the prior period adjustment. Indicated Shippers state that this provision does not allow PTR shippers to net imbalances when notice of a prior period adjustment is received during the last days of a month. Indicated Shippers contend that netting should be allowed to occur during the same time period that a PTR shipper can trade imbalances, *i.e.*, until the 17th business day of the month immediately following the currently ended month. Because PTR shippers have no control over the date when notice of a prior period adjustment is received, Indicated Shippers argue that PTR shippers should be able to determine whether it is more appropriate to net or trade any imbalances resulting from a prior period adjustment.

20. Indicated Shippers argue that the impact of what it believes is an inadequate time period to net PTR imbalances is magnified by the proposed application of ANR's cashout tiering structure to PTR shippers. Indicated Shippers further argue that, by restricting the netting to the month that notice is received, ANR does not provide PTR shippers an adequate opportunity to eliminate imbalances, particularly if the notice of the prior period adjustment is received at the end of the month. Indicated Shippers believe that this is an unrealistic time deadline for netting by PTR shippers in contrast to giving other shippers more flexible timing, which it argues is unduly discriminatory.

21. In its Answer, ANR responds that its tariff only permits netting at the end of the current production month. ANR argues that Indicated Shippers misunderstand the nature and sequence of the netting and trading of imbalances that occur every month.¹⁰ ANR states that the April 20th Order required it to treat an imbalance created by a prior period adjustment as any other imbalance created during that month. To comply with this directive, ANR states that its proposed tariff allows a shipper to provide a make-up nomination during the remainder of the month to reverse the imbalance. At the end of the month, ANR states that it will net whatever imbalances remain, whether the imbalances were created by the shipper during the month or from a prior period adjustment received by the shipper during that month.

22. ANR argues that, to the extent Indicated Shippers are suggesting that netting should also occur during the trading window of the subsequent month, Indicated

¹⁰ ANR explains that, at the end of each production month, ANR nets any shipper imbalances within the same operational impact area across that shipper's agreements. Thus, if a shipper is long 100 dth at the end of the month under one agreement and is short by that same amount under another agreement, and both imbalances occur in the same operational impact area, the two imbalances will be netted to eliminate the imbalance. ANR explains that, if any imbalance remains after this automatic netting occurs, shippers are then given the opportunity to trade the imbalance in the nine-day trading window in the following month.

Shippers' suggestion makes little sense and is contrary to the Commission's requirement that ANR treat prior period adjustments as any other imbalance created during the month. ANR contends that Indicated Shippers' request to have a second round of netting occur after the production month, in which one month's prior period adjustment would be netted against the following month's imbalances, would be unworkable. Further, ANR contends that Indicated Shippers' request represents an expansion of the April 20th Order and is barred by their failure to seek rehearing of that order.

23. We agree with ANR that Indicated Shippers' suggestion that netting should also occur during the trading window of the subsequent month is contrary to the Commission's requirement that ANR treat prior period adjustments as any other imbalance created during the month. As ANR explains, under its tariff the netting of all types of imbalances takes place at the end of the month in which the imbalance occurred. By directing that imbalances arising from prior period adjustments be treated as any other imbalance arising during the month in which the prior period adjustment was received, we intended that such imbalances be included in the netting that takes place at the end of the month in which the prior period adjustment was received. Thus, ANR's compliance filing is consistent with the requirements of the April 20th Order on this issue.

2. Trading

24. In their protest, Indicated Shippers also sought clarification concerning the month in which shippers may trade imbalances resulting from prior period adjustments. As discussed above, ANR's tariff provides that, during a trading period that takes place between the 9th and 17th business day of each month, shippers may trade the net monthly imbalances that they incurred during the preceding month. Indicated Shippers seek clarification that, for purposes of trading, imbalances arising from prior period adjustments will be treated as occurring in the month in which the shipper receives the prior period adjustment. This will ensure that shippers are able to trade such imbalances in the trading period that takes place during the following month. Indicated Shippers are concerned that ANR's tariff language may require imbalances resulting from prior period adjustments to be traded in the same month the prior period adjustment is received, which would be impossible for prior period adjustments received after the 17th day of the month.

25. In its Answer, ANR states that it did not intend to require shippers to trade imbalances arising from prior period adjustments during the month in which the prior period adjustment is received. ANR states that, similar to its treatment of all imbalances created during the month, any remaining imbalance after netting has occurred may be traded during the 9-day window in the subsequent month, as specified in its tariff. In an effort to make this clearer, ANR proposes to further revise its tariff by creating separate sections pertaining to netting and trading.¹¹

¹¹ See Answer at 5 (citing sections 15.6 and 15.7).

26. The Commission finds that ANR's proposal to further revise its tariff by creating separate netting and trading sections will make it clear that, similar to its treatment of all imbalances created during the month, any remaining imbalance after netting has occurred may be traded during the 9-day window in the subsequent month. We therefore accept ANR's proposed tariff language.

3. Application of ANR's Tiering Structure to PTR Shippers

27. As described above, PTR shippers nominate make-up gas to replace shrinkage that took place at the processing plant pursuant to an "Associated Liquefiabiles Agreement" for Rate Schedule ITS service. That agreement currently provides that any imbalances incurred in connection with service under the Associated Liquefiabiles Agreement will be cashed out at 100 percent of the relevant index price, thus exempting such PTR-related imbalances from the tiering structure of ANR's cashout mechanism. The exemption from tiering applies only to imbalances incurred under the Associated Liquefiabiles Agreement. Thus, PTR shippers are currently subject to tiering with respect to any imbalances they incur under their primary firm or interruptible service agreements.

28. In its compliance filing, ANR states that it included the exemption from tiering in the Associated Liquefiabiles form of service agreement, because PTR shippers did not have the same ability to eliminate such PTR-related imbalances in the current production month, as shippers have to eliminate all other imbalances. However, ANR states that, because it has changed its tariff pursuant to the April 20th Order to allow PTR shippers, as well as non-PTR shippers, to both net and trade imbalances created by prior period adjustments in the month in which the adjustment occurs, there is now no difference between the ability of PTR shippers and non-PTR shippers to resolve their imbalances during the month to either minimize, or entirely avoid, having to cash out their imbalances at the end of the month. ANR contends that allowing the netting of imbalances will effectively allow all shippers to resolve imbalances created by prior period adjustments on an in-kind basis by creating an offsetting imbalance during the remainder of the month. Therefore, ANR argues that PTR shippers should be treated in the same manner as all shippers for cashout purposes and, therefore, no longer exempted from the tiering structure. Accordingly, ANR proposes to remove the existing exemption from tiering from the Associated Liquefiabiles form of service agreement.

29. Both Indicated Shippers and Exxon Mobil object to ANR's proposal to eliminate the exemption from the tiering structure for imbalances incurred under their Associated Liquefiabiles service agreements. They contend that ANR has not demonstrated that subjecting PTR shippers to cashout tiering for these imbalances is just and reasonable. Indicated Shippers argue that the Commission's April 20th Order did not require or even suggest that allowing PTR shippers the ability to net and trade PTR imbalances should replace the current cashout mechanism or remove the rationale for the exemption from

the cashout tiering structure. Indicated Shippers argue that the Commission has determined that ANR should provide netting and trading opportunities before PTR imbalances are cashed out and that this decision was based on PTR shippers being cashed out at the 100% cashout price for all PTR imbalances. Indicated Shippers argue that by applying the cashout tiering structure to imbalances incurred under the Associated Liquefiables Agreements ANR will subject PTR shippers to a penalty. They argue that there is no basis in this case for finding that ANR's tiering mechanism as applied to PTR transportation is not a penalty on PTR shippers. Citing Order No. 637-A, Indicated Shippers contend that PTR shippers must not be penalized for unavoidable imbalances.¹²

30. Indicated Shippers also point out that earlier in this proceeding the Commission approved ANR's proposal to use a high/low weekly index price for the cashing out of imbalances, in place of the existing average monthly index price, in order to minimize the shippers' incentive to engage in arbitrage. Under the high/low index price, shippers who take excess gas from the system during a month must pay the pipeline the highest weekly index price during the month for those excess takes. However, shippers who leave excess gas on the system have their imbalances cashed out at the lowest weekly index price for the month. As explained in the April 20th Order,¹³ use of the high/low weekly index price, instead of an average monthly index price, makes it more difficult for the shippers to predict what the cashout price will be and therefore reduces their incentive to incur imbalances for the purposes of arbitrage. Indicated Shippers contend that, unlike non-PTR shippers who may continuously monitor and control the amount of imbalances that occur and adjust their volumes on an ongoing basis, and thus may alter their behavior as a result of a high cashout charge for imbalances over five percent, PTR shippers cannot control their imbalances or the amount of prior period adjustments. Therefore, Indicated Shippers argue that charging a higher cashout price for imbalances over the five percent threshold will not modify the behavior of PTR shippers, but instead will only result in a penalty.

31. Indicated Shippers state that existing precedent and pipeline application support the continuation of PTR shippers' imbalances being cashed out at 100 percent of the cashout price. They argue that not subjecting PTR shippers to cashout tiering is consistent with the Commission's orders regarding other pipelines. Indicated Shippers

¹² Indicated Shippers stated that Order No. 637-A held that when there is arbitrage, pipelines should revise the level and structure of their penalty provisions to minimize the opportunity for arbitrage. *See* Indicated Shippers Protest at 2-3.

¹³ 111 FERC ¶ 61,113 at P 20-32.

point to Tennessee Gas Pipeline Company (Tennessee)¹⁴ and Southern Natural Gas Company (Southern)¹⁵ as examples of pipelines that exempt PTR shippers from cashout price penalty tiers. Indicated Shippers conclude that, while ANR should be required to offer the opportunity for PTR shippers to net and/or trade imbalances related to prior period adjustments as the Commission found in the April 20th Order, this should not be at the expense of increasing the cashout price paid by PTR shippers.

32. In its Answer, ANR responds that eliminating PTR shippers' exemption from tiering is appropriate because the only difference between their ability to control imbalances and other shippers' ability to control their imbalances has been removed by the April 20th Order's requirement that ANR treat prior period adjustments as imbalances occurring in the current month. ANR contends that, if a processing plant changes its shrink percentages resulting in a prior period adjustment, PTR shippers will have an adequate opportunity to eliminate any imbalance during the remainder of the month.¹⁶

33. ANR states that, rather than being unable to avoid cashout by monitoring and managing their imbalance levels, it appears that Indicated Shippers would like the alternative of not having to bother to do so and simply cash out rather than netting or trading the volumes because of limited staff and resources.¹⁷ ANR points out that, as the ALJ and the Commission have found in this case, Indicated Shippers are "some of the largest energy firms in the world and they do not lack for resources." ANR argues that, if Indicated Shippers choose not to expend the resources needed to manage the imbalances they create, they should not complain about the consequences of that choice.

¹⁴ *Citing Tennessee Gas Pipeline Company*, 56 FERC ¶ 61,463, p. 62,627 (1991). Tennessee tariff, Rate Schedule PTR, §7.1, Third Revised Sheet No. 227; Rate Schedule LMS-PA, §7, Sixth Revised Sheet No. 213; *Tennessee*, 73 FERC ¶ 61,158, p. 61,475 (1995), *order on compliance filing*, 74 FERC ¶ 61,323, p. 62,029 (1996).

¹⁵ *Citing Southern Natural Gas Co.*, 65 FERC ¶ 61,346, pp. 62,813-62,814; Southern Natural Gas Company, General Terms and Conditions §14.1(h), Second Revised Sheet No. 143.

¹⁶ ANR states that, to the extent that a shipper receives a prior period adjustment toward the end of the month, such shipper will be similarly situated to a non-PTR shipper that may not have sufficient time to entirely eliminate imbalances created during the last few days of the month. By managing their imbalance level during the month and availing themselves of trading opportunities, ANR asserts that both shippers should be able to stay within the 5% tolerance level before tiering applies.

¹⁷ ANR Answer (*citing* Indicated Shippers Protest at 3).

34. The Commission accepts ANR's proposal to apply the same tiering of the cashout price to imbalances incurred in connection with PTR shippers' service under their Associated Liquefiabiles service agreements, as ANR applies to the cashout of all other imbalances. Since ANR will continue to cashout all imbalances of five percent or less at 100 percent of the cashout price, ANR's tiering proposal only affects imbalances in excess of that five percent threshold. As a result of the requirement in the April 20th Order that prior period adjustments be treated in the same manner as any other imbalance occurring during the month the prior period adjustment is received, PTR shippers should have a similar ability to keep their imbalances within five percent as all shippers have. As described above, PTR shippers may now seek to cure any imbalances resulting from prior period adjustments to their takes under their Associated Liquefiabiles service agreements on an in-kind basis during the remainder of the month in which the prior period adjustment is received. To the extent any net monthly imbalance remains at the end of the month, the PTR shippers may trade those imbalances during the following month's trading period.

35. Moreover, as ANR states in its rehearing request, when it nets a shipper's imbalances at the end of the month, it nets all of the daily imbalances the shipper has incurred under all of its service agreements with ANR into one single net monthly imbalance. Only the net monthly imbalance that remains after trading is cashed out. Pursuant to the April 20th Order, this means that all of a PTR shipper's daily imbalances, both those incurred under their Associated Liquefiabiles interruptible service agreement and those incurred under their primary firm or interruptible service agreements, will be netted into a single net monthly imbalance. Moreover, the net monthly imbalance will include both daily imbalances resulting from physical gas flows during the month and imbalances resulting from prior period adjustments received during the month. Thus, PTR shippers will no longer have any separate monthly imbalance identifiable as arising in connection with nominations to make up plant shrinkage pursuant to their Associated Liquefiabiles interruptible service agreement. As a result, the April 20th Order has rendered impracticable ANR's existing system of cashing out PTR shipper's imbalances arising under their Associated Liquefiabiles service agreements at 100 percent of the index price, while subjecting their imbalances under their primary service agreements to the tiered cashout mechanism. For this reason, the Commission finds that it is appropriate for ANR to make this change in its instant compliance filing.¹⁸

36. As Indicated Shippers point out, one purpose of both the use of a high/low weekly index price and the tiering of the index price is to minimize shipper incentives to engage in arbitrage. Given the PTR shipper's increased ability to control their net monthly

¹⁸ See *ANR Pipeline Co. v. FERC*, 863 F.2d 959 (D.C. Cir. 1988), in which the court reversed a Commission order refusing to permit the pipeline, in a filing to comply with a Commission NGA section 5 requirement, to make other changes which reasonably flowed from the specific section 5 requirement.

imbalances, we find that purpose of the tiering mechanism is reasonably applicable to PTR shippers.

37. Finally, we find that the cases Indicated Shippers cite, to support its position, are distinguishable from the instant situation. In *Southern*,¹⁹ the pipeline itself proposed always to use 100 percent of the index price to cash out imbalances accrued by a shipper under its “Liquefiabiles Transportation Agreements,” which are similar to the Associated Liquefiabiles Agreements at issue here. It also proposed to perform those cashouts separately from all the shipper’s other imbalances.²⁰ Thus, in *Southern*, PTR shippers could not net their other imbalances against their PTR-related imbalances, as we have required ANR to permit here, and no issue about the appropriateness of applying tiering to such overall net imbalances arose. Nor did the Commission find that it would be unreasonable for Southern to apply tiering to PTR-related imbalances, if it desired to do so. We simply found that its proposal not to apply tiering to such imbalances was reasonable. In the *Tennessee* cases cited by Indicated Shippers,²¹ the pipeline made a proposal virtually identical to the proposal made by the pipeline in the *Southern* case. Thus, the *Tennessee* orders are distinguishable on the same grounds as the *Southern* order.

4. Buydown Proposal

38. As directed by the Commission in the April 20th Order, ANR included a new section 15.7 to implement its buydown proposal to resolve its historical gas deficiency. The Commission accepts the tariff sheets, to be effective as proposed.

The Commission orders:

(A) ANR’s tariff sheets identified in the Appendix are accepted to be effective as proposed, subject to ANR’s filing revised tariff sheets that implement the further clarifying changes proposed in its Answer.

(B) ANR is directed to file these revised tariff sheets within 15 days of this order.

¹⁹ *Supra* note 15.

²⁰ *See* section 14.1(h) of Southern’s GT&C.

²¹ *Supra* note 14.

Docket Nos. RP02-335-005 and RP02-335-006

14

(C) ANR's request for clarification is granted and the rehearing request is dismissed as moot.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

Effective May 1, 2005

Fifth Revised Sheet No. 137A
Fifth Revised Sheet No. 139
Sixth Revised Sheet Nos. 140-141
Fourth Revised Sheet No. 141A
Fifth Revised Sheet No. 141A
Fourth Revised Sheet No. 142
Third Revised Sheet No. 143

Effective July 1, 2005

Second Revised Sheet No. 75G.03
Sixth Revised Sheet No. 141A