TC Energy

April 8, 2021

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Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: ANR Pipeline Company
Petition for Limited Waivers
Docket No. RP21-_____- 000

Dear Ms. Bose:

Pursuant to Rule 207 of the Rules of Practice and Procedure[1] of the Federal Energy Regulatory Commission ("Commission" or "FERC"), ANR Pipeline Company ("ANR") hereby petitions the Commission for a limited waiver of the General Terms and Conditions ("GT&C") of ANR's FERC Gas Tariff, Third Revised Volume No. 1 ("Tariff"), and to the extent necessary the Commission's regulations. ANR is requesting these temporary waivers to allow for the remarketing of capacity currently contracted on a firm basis by Gulfport Energy Corporation ("Gulfport") but currently subject to a motion to reject (see below) in Gulfport's bankruptcy proceeding, as described further herein.

Correspondence

The names, titles, mailing addresses, and telephone numbers of those persons to whom correspondence and communications concerning this filing should be addressed are as follows:

[1] 18 C.F.R. § 385.207 (2021).

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<u>Statement of the Nature, Reasons and Basis for Filing</u>

<u>Background</u>

On November 13, 2020, Gulfport filed a petition for relief under chapter 11 and title 11 of the United States Code ("Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Texas ("Bankruptcy Proceeding").[2] On November 15, 2020, Gulfport filed its Rejection Motion[3] seeking to, among other things, reject its firm transportation service agreements with ANR (the capacity associated therewith shall be referred to herein as the "Capacity").[4] ANR is opposing the Rejection Motion. During the Bankruptcy Proceeding, Gulfport and ANR agreed to file a joint stipulation with the bankruptcy court to permit ANR to remarket the Capacity during

[2] On September 21, 2020, in Docket No. RP20-1204-000, ANR, along with Columbia Gas Transmission, LLC and Columbia Gulf Transmission, LLC, sought a declaratory order from the Commission. As relevant to the waivers requested herein, ANR asked the Commission to find that, should Gulfport file for bankruptcy, the Commission would have concurrent jurisdiction with the bankruptcy court over the transportation service agreements between ANR and Gulfport. On October 5, 2020, the Commission issued a declaratory order finding that the Gulfport transportation service agreements with ANR constitute filed rates under the Natural Gas Act, subject to the filed-rate doctrine and the *Mobile-Sierra* presumption, and that, if Gulfport were to file for bankruptcy, the Commission will have concurrent jurisdiction with the bankruptcy court. See *ANR Pipeline Company, et al.*, 173 FERC ¶ 61,018 (2020) at Ordering Paragraph A.

[3] Motion of Gulfport Energy Corporation for Entry of an Order (I) Authorizing Reject of Certain Negotiated Rate Firm Transportation Agreements and Related Contracts Effective as of the Petition Date and (II) Granting Related Relief (Nov. 15, 2020) (Docket 58) ("Rejection Motion")

[4] Specifically, Contract Nos. 123253, 123254, 123255, 123625, 123626, 123627, 123628, 123629, 124156, 124157, 124158, 124159, 124160, 124690, 128708, and 132342 between ANR and Gulfport, all of which are conforming service agreements at maximum recourse rate for service under ANR's Rate Schedule FTS-1.

the pendency of the Bankruptcy Proceeding, *i.e.*, on either a short or long-term basis. On March 10, 2021, the bankruptcy court approved the joint stipulation between ANR and Gulfport permitting ANR to remarket the Capacity, on a long-term or short-term basis, notwithstanding the pending Bankruptcy Proceeding without further order from the bankruptcy court (the "Stipulation and Order"). A copy of the Stipulation and Order is attached hereto as Appendix A.

ANR seeks authority from the Commission to remarket the Capacity by offering it to the market on a not unduly discriminatory, open-access basis, using the most appropriate commercial tools in its discretion. This may include posting the Capacity in an open season or making such Capacity available on its electronic bulletin board. While the bankruptcy court may have authorized ANR to remarket Gulfport's Capacity during the pendency of the Bankruptcy Proceeding, Gulfport's transportation service agreements with ANR and the associated Capacity remain subject to the Commission's jurisdiction. As a result, ANR is respectfully requesting waiver of the necessary provisions of ANR's Tariff, as well as Commission regulations, to permit ANR to remarket all or a portion of the Capacity and ensure that the Capacity, though still associated with Gulfport's transportation service agreements, is able to be utilized by other shippers who may value it.

Requests for Waiver

Waiver of Capacity Release Regulations

Initially, ANR seeks waivers of the Commission's regulations and ANR's Tariff regarding capacity releases. Specifically, Section 284.8[5] of the Commission's regulations sets forth the regulations governing the release of capacity. These regulations state that ***firm shippers*** may release their own capacity in whole or in part, that the rate at which the capacity is released may not exceed the applicable maximum rate except for the release of capacity for one year or less, that the ***firm shipper*** must notify the pipeline of any pre-arranged replacement shipper, that the pipeline must provide notice of offers to release capacity, and, finally, that the pipeline must allocate released capacity to the person offering the highest rate and offering to meet any other terms and

[5] 18 C.F.R. § 284.8 (2021).

conditions of the release. These regulations are incorporated in Section 6.21 of the GT&C of ANR's Tariff.

Central to these capacity release regulations is the *firm shipper's* ability to remarket capacity it no longer wishes to use. The regulations create no mechanism for a pipeline, however, to remarket capacity that is associated with a firm contract regardless of whether that capacity is being utilized. Rather, that capacity is reserved for the firm shipper. This capacity release mechanism and the prohibition of a pipeline selling on a firm basis capacity which has already been reserved by a firm shipper makes sense under normal circumstances. However, once a firm shipper has filed for bankruptcy and seeks to rejects its firm contracts, pipelines are significantly disadvantaged. The pipeline must continue to reserve capacity for a shipper that may not use it for the duration of any bankruptcy proceeding, which can last for months or years before any resolution is achieved. ANR notes that Gulfport's Bankruptcy Proceeding is soon entering its sixth month of active litigation. As a result, the Capacity has been idled on ANR's system for many months while not producing reservation charges. To ensure that the Capacity is returned to the marketplace and allocated to a shipper (or shippers) who will value and make use of the Capacity, ANR respectfully requests waiver of the Commission's regulations on capacity release, as well as ANR's Tariff provisions regarding the same, to allow for remarketing the Capacity outside of the capacity release provisions so that ANR may attempt to sell such Capacity while the Rejection Motion and other Bankruptcy Proceeding related matters progress to a shipper (or shippers) that will utilize the Capacity.

Waiver of Right of First Refusal Regulations

Section 284.221(d)(2) provides an exception to the general pre-grant of abandonment at the end of a contract term where the shipper has a contract for a term of 12 consecutive months or more at maximum tariff rate or a contractual right to do so ("ROFR").[6] Should a shipper opt to extend the term of their firm agreement via the ROFR procedures, the capacity would be generally posted as ROFR capacity, and the original shipper would have the right to match the a bid from another shipper, if any, thus extending the term of their agreement. Again, this regulation is incorporated in Section 6.22 of the GT&C of ANR's Tariff.

[6] 18 C.F.R. § 284.221(d)(2) (2021).

However, if ANR remarketed the Capacity and received a maximum rate offer for long-term firm capacity from a separate shipper ("Subsequent Shipper"), though for a term shorter than that in the corresponding service agreements between Gulfport and ANR, ANR would not be permitted to accept the offer absent this waiver. Unlike normal circumstances where capacity is not sold beyond the expiration of a service agreement with ROFR rights, enabling a shipper to exercise its ROFR rights, here, the Capacity would remain contracted with Gulfport at the expiration of the Subsequent Shipper's term. As a result, ANR would not be able to provide ROFR rights to the Subsequent Shipper for capacity reserved on an interim basis, even if the Subsequent Shipper would have otherwise qualified for a ROFR pursuant to Section 284.221(d)(2), since the Capacity beyond the Subsequent Shipper's term remains with Gulfport pending the outcome of the Bankruptcy Proceeding.

The Commission has permitted restrictions on a shipper's ROFR rights for interim capacity under certain circumstances wherein the underlying capacity is subject to a separate contract in the future. For example, where capacity has been reserved by a pipeline to be contracted as part of a future expansion project, the Commission has permitted the pipeline to enter into interim service agreements for the capacity prior to the implementation of the expansion project without the ROFR requirement.[7] Additionally, where pipelines have sold capacity with a commencement date more than one year in the future, the Commission has permitted pipelines to enter into interim service agreements without any ROFR requirement. These limitations on ROFR rights apply even in situations when the interim shipper would otherwise be eligible for a ROFR with long-term service at recourse rates.[8] Exempting these sales from the ROFR requirement permits the applicable pipeline to sell the capacity on a long term interim basis to shippers that value and will utilize it. The capacity would sit idle otherwise, since the pipeline could not sell it in a way that complies with the Commission's ROFR requirements. Similarly, if ANR was only able to recontract a portion of the term of the Capacity, Gulfport would still be entitled to utilize the Capacity for the remaining term. In effect, Gulfport continues to reserve the Capacity for a future portion of the

[7] See *Tennessee Gas Pipeline Company*, 115 FERC ¶ 61,120 (2006). See also, *Texas Gas Transmission, LLC*, 111 FERC ¶ 61,380 (2005).
[8] See *Rover Pipeline LLC,* 172 FERC ¶ 61,107 (July 10, 2020).

Capacity's respective original terms. As a result, ANR respectfully requests waiver of Section 284.221(d)(2) of the Commission's regulations as well as Section 6.22 of the GT&C of ANR's Tariff to permit ANR to remarket the Capacity on a long-term basis while limiting ROFR rights to allow a Subsequent Shipper who may value the capacity to contract for it while maintaining Gulfport's existing contractual rights.

Other Potential Waivers

ANR is seeking the ability to remarket the Capacity in the most efficient manner to ensure that the Capacity goes to the shipper who values it most. As a result, ANR is exploring all potential options for remarketing the Capacity, some of which may require further waivers. While unlikely, it is possible ANR may enter into an agreement where the new shipper does not actually own the gas that it is transporting, or the capacity is tied to other capacity or some other business transaction. As a result, and out of abundance of caution, ANR is seeking waiver of the Commission's "shipper must have title" policy, the Commission's prohibition on buy-sell arrangements, as well as the Commission's prohibition against tying arrangements to permit ANR to remarket the Capacity to third parties. ANR notes that any such transaction(s) will result from a not unduly discriminatory posting and awarding process consistent with the manner in which ANR sells other available capacity on its system and with any waivers granted in response to this request, so the that aforementioned waivers will not cause a risk of undue discrimination.

Limited Waivers and Impact on Existing Shippers

ANR seeks waiver of the Commission's regulations and its Tariff solely as it relates to the Capacity, which is associated with the Gulfport transportation service agreements that Gulfport currently seeks to reject. ANR <u>*does not*</u> seek waivers to remarket any capacity associated with any other firm shipper on ANR's system. Additionally, ANR only seeks waiver to remarket the Capacity on an interim basis. If any Capacity is turned back to ANR upon the resolution of the contract rejection process, ANR will remarket that capacity consistent with both the Commission's regulations as well as ANR's Tariff. As a result, this request for waiver is limited in time and scope.

Further, no shippers will be harmed by these waivers. Rather, other shippers will benefit from Commission approval of the waivers and the remarketing of the Capacity. Approval of these waivers and the remarketing would benefit shippers and the market by not allowing Gulfport to "tie up long term firm transportation capacity at the expense of other shippers that may place a higher value on that capacity."[9] Additionally, as evidenced by the order on the Stipulation and Order between Gulfport and ANR attached hereto as Appendix A, Gulfport was authorized to take any actions necessary or appropriate to assist or enable ANR to remarket the Capacity. As a result, no shippers will be harmed by granting these waivers.

Accordingly, ANR respectfully requests the Commission grant waiver of the above-described regulations and Tariff provisions, as well as any other waivers the Commission deems necessary to facilitate the remarketing of the Capacity.

Request for Expedited Commission Action

Currently, the service agreements associated with the Capacity are largely unutilized. Further, ANR continues to go unpaid for reservation charges associated with the unused Capacity under the service agreements. It is in the interest of all parties that ANR be able to remarket the Capacity as soon as reasonably possible. As a result, ANR respectfully requests a shortened seven-day comment period as well as a Commission order on these waiver requests by April 23, 2021. ANR requests the Commission grant all necessary waivers of its regulations to approve the waivers described herein within this timeframe.

Other Filings Which May Affect This Proceeding

There are no other filings before the Commission that may significantly affect the changes proposed herein.

[9] *Gulf South Pipeline Company, LP*, 135 FERC ¶ 61,119, at P 20 (2011) (citing *Trailblazer Pipeline Co.*, 103 FERC ¶ 161,225 (2003)). ¶

Contents of Filing

In accordance with Section 154.7(a)(1) of the Commission's regulations, ANR is submitting the following XML filing package, which includes:

1. This transmittal letter and
2. Supporting documentation (Appendix A).

Certificate of Service

As required by Sections 154.7(b), 154.207, and 154.208(b) of the Commission's regulations, a copy of this filing is being served upon all of ANR's existing customers and interested state regulatory agencies. A copy of this letter, together with any attachments, is available for public inspection during regular business hours at ANR's principal place of business.[10]

Pursuant to Section 385.2005 of the Commission's regulations, the undersigned has read this filing and knows its contents, and the contents are true as stated, to the best of his knowledge and belief. The undersigned possesses full power and authority to sign such filing.

Any questions regarding this filing may be directed to Richard Bralow at (832) 320-5177.

Respectfully submitted,

ANR Pipeline Company

John A. Roscher

John A. Roscher
Director, Rates & Tariffs

Enclosures

[10] Due to the Covid-19 pandemic, ANR's principal place of business is closed. When ANR's office reopens, the letter and attachments will be available during normal business hours at ANR's office in Houston, Texas.

Appendix A

ENTERED
03/10/2021

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
GULFPORT ENERGY CORPORATION, *et al.*,[1]	)	Case No. 20-35562 (DRJ)
Debtors.	)	(Jointly Administered)
	)	(Docket No. 892)

JOINT STIPULATION AND AGREED ORDER BY AND AMONG THE DEBTORS AND ANR PIPELINE COMPANY, COLUMBIA GAS TRANSMISSION, LLC, AND COLUMBIA GULF TRANSMISSION, LLC GRANTING RELIEF FROM THE AUTOMATIC STAY

This *Joint Stipulation and Agreed Order* (this "Stipulation") is made and entered into by and among (a) Gulfport Energy Corporation and the other debtors in possession in the above-captioned chapter 11 cases (the "Debtors"), and (b) ANR Pipeline Company ("ANR"), Columbia Gas Transmission, LLC ("Columbia Gas") and Columbia Gulf Transmission, LLC ("Columbia Gulf" and, together with the Debtors, ANR and Columbia Gas, the "Parties"). The Parties hereby stipulate and agree as follows:

I. RECITALS

WHEREAS, on November 13, 2020 (the Petition Date"), each of the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Texas (the "Court");

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Gulfport Energy Corporation (1290); Gator Marine, Inc. (1710); Gator Marine Ivanhoe, Inc. (4897); Grizzly Holdings, Inc. (9108); Gulfport Appalachia, LLC (N/A); Gulfport MidCon, LLC (N/A); Gulfport Midstream Holdings, LLC (N/A); Jaguar Resources LLC (N/A); Mule Sky LLC (6808); Puma Resources, Inc. (6507); and Westhawk Minerals LLC (N/A). The location of the Debtors' service address is: 3001 Quail Springs Parkway, Oklahoma City, Oklahoma 73134.

WHEREAS, the Debtors' chapter 11 cases are being jointly administered for procedural purposes;

WHEREAS, the Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, on November 15, 2020, the Debtors filed the *Motion of Gulfport Energy Corporation for Entry of an Order (I) Authorizing Rejection of Certain Negotiated Rate Firm Transportation Agreements and Related Contracts Effective as of the Petition Date and (II) Granting Related Relief* [Docket No. 58] (the "Rejection Motion");[2]

WHEREAS, the Rejection Motion seeks authorization for the Debtors to reject the ANR Agreements, the Columbia Gas Agreements and the Columbia Gulf Agreements (collectively, the "TSAs") effective as of the Petition Date;

WHEREAS, the Debtors believe it is in the best interests of their estates for each of ANR, Columbia Gas, and Columbia Gulf to be permitted to promptly remarket capacity available under the TSAs to which it is a party while the Rejection Motion is pending, and for Debtors to take any actions necessary or appropriate to assist or enable ANR, Columbia Gas, and Columbia Gulf to remarket capacity without further order of the Court; and

WHEREAS the Debtors consent to relief from the automatic stay imposed by section 362 of the Bankruptcy Code as set forth herein to allow each of ANR, Columbia Gas, and Columbia Gulf to remarket such capacity including taking actions necessary or appropriate in connection therewith.

[2] Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Rejection Motion.

THEREFORE, IT IS HEREBY STIPULATED AND AGREED, AND UPON APPROVAL BY THE COURT OF THIS STIPULATION, IT IS SO ORDERED as follows:

1. The above recitals are incorporated by reference into this Stipulation with the same force and effect as if fully set forth hereinafter.

2. Each of ANR, Columbia Gas, and Columbia Gulf is hereby granted relief from the automatic stay under section 362(a) of the Bankruptcy Code, as necessary, solely to allow it to partially or fully remarket capacity available under some or all of the TSAs to which it is a party, and to take actions necessary or appropriate in connection therewith including filings, communications and/or responses with the Federal Energy Regulatory Commission.

3. For the avoidance of doubt, nothing herein shall constitute the Court's approval of the Debtors' rejection of the TSAs, which is being sought separately by the Rejection Motion. The Parties' rights in respect of the TSAs and the Rejection Motion are reserved and not altered by this Stipulation, except as specifically set forth herein regarding authorization to remarket capacity.

4. The Debtors are authorized to take any actions necessary or appropriate to assist or enable ANR, Columbia Gas, and Columbia Gulf to remarket capacity without further order of the Court and without notice or hearing.

5. Each of the Parties to this Stipulation represents and warrants it is duly authorized to enter into and be bound by this Stipulation.

6. Neither this Stipulation, nor any terms contained herein, shall be offered in evidence in any legal proceeding or administrative proceeding among or between the Parties, other than as may be necessary: (a) to obtain approval of and to enforce this Stipulation, (b) to seek appropriate relief in connection therewith, or (c) to prove that the automatic stay has been modified in accordance with the terms of this Stipulation.

7. The Court retains exclusive jurisdiction with respect to any disputes arising from or other actions to interpret, administer, or enforce the terms and provisions of this Stipulation.

Signed: March 10, 2021.

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

STIPULATED AND AGREED TO THIS 8TH DAY OF MARCH, 2021:

Respectfully Submitted,

/s/ Matthew D. Cavenaugh

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CERTIFICATE OF SERVICE

The undersigned certifies that on March 8, 2021 a true and correct copy of this document was served by electronic means as listed on the Court's ECF noticing system.

/s/ Matthew D. Cavenaugh
Matthew D. Cavenaugh