

85 FERC ¶ 61,080

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
Vicky A. Bailey, William L. Massey,
Linda Breathitt, and Curt Hébert, Jr.

Michigan Consolidated Gas Company) Docket No. PR94-9-002
)

ORDER ON REMAND

(Issued October 19, 1998)

Date: 6-13-17 Exh # H-666
Regulatory Commission of Alaska

By: LJR
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On December 12, 1995, the United States Court of Appeals for the District of Columbia Circuit in ANR Pipeline Company v. FERC (ANR) 1/ reversed in part and remanded the Commission's decisions in this proceeding 2/ for further proceedings. The Court found that the Commission's reasons for approving Michigan Consolidated Gas Company's (MichCon) use of blended rates failed to confront the Commission's determination in Order No. 636 3/ of the anti-competitive nature of blended rates in interstate transportation service. For the reasons discussed below, the Commission will require MichCon to file rates utilizing a straight fixed variable (SFV) rate design.

Background

On March 2, 1994, MichCon, a local distribution company which qualifies as a Hinshaw pipeline, notified the Commission of

- 1/ 71 F.3d 897 (D.C. Cir. 1995).
- 2/ Michigan Consolidated Gas Co., 68 FERC ¶ 61,090 (1994), order on reh'g, 68 FERC ¶ 61,311 (1994).
- 3/ Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 Fed. Reg. 13267 (April 16, 1992), FERC Stats. & Regs. ¶ 30,939 (April 8, 1992), order on reh'g, Order No. 636-A, 57 Fed. Reg. 36128 (August 12, 1992), FERC Stats. & Regs. ¶ 30,950 (August 3, 1992), order on reh'g, Order No. 636-B, 61 FERC ¶ 61,272 (1992), reh'g denied, 62 FERC ¶ 61,007 (1993), aff'd in part and remanded in part, United Distrib. Cos. v. FERC, 88 F.3d 1105 (D.C. Cir. 1996) cert. denied, 117 S.Ct. 1723 (1997), order on remand, Order No. 636-C, 78 FERC ¶ 61,186 (1997), order on reh'g, Order No. 636-D, 83 FERC ¶ 61,210 (1998).

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its intent to change the rates charged for its service under its Section 284.224 blanket certificate 4/ pursuant to Section 284.123(b)(1) of the Commission's regulations. 5/ Section 311 of the Natural Gas Policy Act of 1978 (NGPA) allows intrastate pipelines to transport gas "on behalf of" interstate pipelines or local distribution companies served by interstate pipelines so long as their rates are "fair and equitable" and do not "exceed an amount which is reasonably comparable to the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation services." Under Order No. 46, 6/ which applies the fair and equitable standard to Section 311 service, an intrastate pipeline that has received a blanket certificate to operate "on behalf of" interstate pipelines can elect to use rates for comparable intrastate service approved by a state utility commission, design its rates based on the methodology approved by its state utility commission to recover the transportation costs in its citygate sales rates, or allow this Commission to set the rates. 7/ Under Section 311 of the NGPA, rates which are elected under these options are presumed to be fair and equitable. In Order No. 63, 8/ the Commission authorized Hinshaw pipelines to apply for certificates of authorization to transport gas in interstate commerce just as intrastate pipelines were allowed to do under Section 311 of the NGPA.

Initially, since MichCon did not have existing rates for comparable intrastate transportation service on file with the appropriate state regulatory authority, it used a rate methodology for other citygate service authorized by the Michigan Public Service Commission (MPSC). 9/ In the March 2, 1994 filing, MichCon notified the Commission that it now had a rate on file with the MPSC for comparable intrastate transportation service and that it was changing its rate election from the methodology rate to the new rate on file with the state

4/ See 18 C.F.R. § 284.224 (1997).

5/ 18 C.F.R. § 284.123(b) (1997).

6/ Final Rule, Sale and Transportation of Natural Gas, FERC Stats. & Regs. ¶ 30,081 (1979).

7/ See 18 C.F.R. § 284.123(b) (1997).

8/ Final Rule, Certain Transportation, Sales and Assignments by Pipelines Companies not Subject to Commission Jurisdiction Under Section 1(c) of the Natural Gas Act, FERC Stats. & Regs. ¶ 30,118 (1980).

9/ See 18 C.F.R. §§ 284.123(b)(1)(I) and 284.224(e)(2).

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commission. 10/ The firm transportation rate on file with the state commission consisted of a maximum rate of \$ 0.15 per Mcf, stated on a 100 percent load factor basis. MichCon was authorized to negotiate the relative levels of the demand and commodity components of the rate, with the sum total not exceeding the maximum rate. This allows MichCon to negotiate to shift more or less of its fixed costs from the demand component to the usage component. This has been referred to as "blending" the rate.

ANR Pipeline Company (ANR) filed comments asserting that it competed with MichCon and that, as an interstate pipeline subject to the Commission's NGA jurisdiction, it was prohibited from negotiating blended rates with its customers pursuant to Order No. 636. This was because Order No. 636 required ANR to use an SFV rate design, in which fixed costs are recovered solely through the demand charges. ANR asserted that MichCon should apply its blended rate in a manner consistent with the Commission's SFV rate design by negotiating its rates in such a way as to apply any discount to its reservation charge without shifting any fixed costs to the commodity portion of the rate. MichCon responded that it would not oppose ANR's suggested condition if it was required by the Commission, but it was not itself proposing to modify its rate to include that condition.

In the July 19, 1994 order in this proceeding, the Commission approved the subject MichCon rates without including the condition requested by ANR. 11/ In its request for clarification or, in the alternative rehearing of that order, ANR argued that the Commission had incorrectly dismissed its comments and sought clarification that MichCon should apply its blended rate authority in a manner consistent with the Commission's SFV rate design policy. ANR contended, *inter alia*, that the Commission's decision placed MichCon in a supra-competitive position as compared to interstate pipelines providing the same service. ANR asserted that, under the subject rate schedule, MichCon is permitted to negotiate or blend the demand and commodity components of the maximum rates, so long as the total blended rate does not exceed the maximum rate stated on a 100 percent load factor basis. ANR further asserted that MichCon is also permitted to shift fixed costs from the demand portion of its rate to the commodity portion of its rate, creating an overall benefit to MichCon's customers. ANR contended that this authority to blend rates is denied to MichCon's interstate pipeline competitors, since under SFV fixed costs may only be included in the demand charge. In the September 16, 1994 order

10/ See 18 C.F.R. § 284.123(b).

11/ 68 FERC ¶ 61,090.

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on rehearing in this proceeding, the Commission, *inter alia*, denied ANR's request for clarification and rehearing. 12/

In the ANR decision, the Court stated that the Commission had approved MichCon's election of blended rates without addressing the determinations in Order No. 636 concerning the detrimental effect of blended rates on the interstate transportation market or how MichCon would overcome the heavy burden that an interstate pipeline would have to bear under Order No. 636 in order to be authorized to use blended rates. 13/ The Court also stated that because the Commission found in Order No. 636 that blended rates are anti-competitive, ANR could rebut the presumption in Section 284.123(d) that the rates are fair and equitable without presenting further economic analysis. The Court stated that, in view of the Commission's conclusions about rate blending and the necessity of the SFV rate method to promoting congressional directives for a national natural gas market, in addressing ANR's concerns about MichCon's use of blended rates, the Commission must provide a reasonable justification for excluding MichCon from the SFV requirements. 14/

Motion on Remand and Responses

On November 21, 1997, ANR filed a motion for action on the Court's remand. ANR asserted that such action is warranted to assure that all suppliers of interstate transportation and storage services are on the same competitive footing with respect to the provision of such services. MichCon filed an answer to ANR's motion on December 8, 1997. MichCon responded that there is no evidence that MichCon's blended rate structure affords it a competitive advantage over ANR. MichCon argued that ANR has not provided any evidence regarding market conditions in Michigan. MichCon further argued that customers it serves under the subject rate schedules tend to be high load factor customers and that such customers would be more inclined to accept an SFV rate structure. MichCon asserted that ANR's volumetric interruptible transportation service competes with MichCon's Hinshaw service and that, under ANR's theory, it would also be illegally anti-competitive with ANR's firm service. MichCon contended that Hinshaw blanket service and long-haul interstate services are different services. MichCon further contended that the rates charged by Hinshaw pipelines, being well downstream of the interstate pipeline connected to the wellhead, have no impact on wellhead prices. MichCon asserted that the Commission's use of

12/ 68 FERC ¶ 61,311.

13/ 71 F.3d at 902.

14/ Id.

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state-approved rates for interstate service appropriately recognizes that the true competitors with Hinshaw pipelines are other intrastate pipelines. MichCon further asserts that assuming, arguendo, that MichCon's rate structure affords it with an unfair competitive advantage, the appropriate remedy would be to modify ANR's rate structure to permit blended rates.

On January 8, 1998, ANR filed a reply to MichCon's answer to the motion. ANR replied that the Commission must show on remand that MichCon's blended rates are not anti-competitive and unduly discriminatory. ANR asserted that its ability to offer interruptible services at volumetric rates is irrelevant since firm and interruptible services are not comparable. ANR further asserted that MichCon's interstate services are the same as those of interstate pipelines and that Order No. 636 was designed to create a level playing field among all interstate service providers. ANR argued that MichCon is expanding its role as an interstate service provider with interstate transportation services of 129 Bcf in 1993. ANR asserts that Vector Pipeline L.P. now proposes in Docket No. CP98-131-000, et al., to lease significant capacity on one of MichCon's mainlines and exchange substantial volumes with MichCon under its blanket certificate. ANR further argued that MichCon is capable of affecting wellhead prices and can have a critical competitive influence on the economics of interstate gas transportation and the choices made by shippers. ANR asserts that allowing it to blend its rates is no answer since the focus of the Court's decision was on MichCon's rates not ANR's rates.

Discussion

As the Court held in its ANR decision, Order No. 636 "adopted 'regulations to ensure that all gas supplies are moved to market on even terms.'" ^{15/} Among those regulations was Section 284.8(d) of the Commission's regulations, ^{16/} which reflects the Commission's current policy on the SFV methodology. ^{17/} That section states, in part, that:

if a reservation fee is charged, it must
recover all fixed costs attributable to the firm
transportation service, unless the Commission permits

^{15/} 71 F.3d at 903, quoting Order No. 636 at 30,433.

^{16/} 18 C.F.R. § 284.8(d) (1997).

^{17/} As the ANR Court also pointed out, Order No. 636 held that the SFV rate design policy there adopted "is as essential to the shipment of gas on even terms as is equality of the quality of service with respect to gas transportation." 71 F.3d at 901, quoting Order No. 636 at 30,434.

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the pipeline to recover some of the fixed costs in the volumetric portion of a two-part rate.

On remand, the Commission finds that no basis has been presented for permitting MichCon's proposed blended rate. ~~The subject service provided by MichCon is an interstate service.~~ MichCon's assertions that it does not affect wellhead prices and attempting to distinguish Hinshaw blanket service from other interstate service are unsupported. For example, MichCon asserts that its service is performed well downstream of the interstate pipeline connected to the wellhead. However, the Commission has applied its SFV policy to interstate pipelines equally far downstream from the wellhead. Moreover, ANR's ability to offer interruptible rates at a volumetric rate is unrelated to the subject firm rates at issue here.

Therefore, MichCon is directed to file rates reflecting an SFV rate design recovering all fixed costs attributable to the subject transportation service in the reservation fee within twenty days of the date of issuance of this order to be effective on the first day of the following month, December 1, 1998. This decision regarding rate design will be made effective prospectively and no refunds will be required. This is because the concerns related to the subject blended rates are related to competitive issues and promoting policy goals.

Subsequent to the ANR decision, in Tennessee Gas Pipeline Co. (Tennessee), 18/ and Northwest Pipeline Corp. (Northwest), 19/ the Commission approved settlements which included minor deviations from SFV rates. Therefore, in addition, to meeting the requirement to file SFV rates within twenty days, if MichCon files a settlement containing non-SFV rates, the settlement would be considered consistent with the Commission's determinations in Tennessee and Northwest. The Commission has also stated in its Alternative Rate Policy Statement, 20/ that it is willing to entertain, on a shipper-by-shipper basis, requests to implement negotiated rates where customers retain the ability to chose a cost-of-service based tariff rate consistent with Commission policy. Accordingly, MichCon may propose negotiated rates consistent with Commission determinations and policy.

Finally, the Commission has recently issued a Notice of Inquiry in Docket No. RM98-12-000 requesting comments, among

18/ 77 FERC ¶ 61,083 (1996).

19/ 81 FERC ¶ 61,243 (1997), order denying reh'g, 83 FERC ¶ 61,001 (1998).

20/ Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, 74 FERC ¶ 61,076 (1996).

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other things, on whether it should reevaluate its preference for SFV rate design. 21/ However, the Commission's resolution of this case must be based upon its current policy.

The Commission orders:

MichCon is directed to file rates reflecting an SFV rate design recovering all fixed costs attributable to the subject transportation service in the reservation fee within twenty days of the date of issuance of this order to be effective on December 1, 1998, as discussed in the body of this order.

By the Commission.

(S E A L)


David P. Boergers,
Secretary.

21/ Regulation of Interstate Natural Gas Transportation Services, Notice of Inquiry, IV FERC Stats. & Regs. ¶ 35,533 (1998).

