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2004 SEP 30 P 2:09

September 30, 2004

FEDERAL ENERGY
REGULATORY COMMISSION

The Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

RE: Docket No. RP04-616-000

Dear Secretary Salas:

Enclosed for filing is an original of a Complaint Requesting Fast-Track Processing of Northern Natural Gas Company (Northern). In the Complaint, Northern requests Commission resolution of a pressure dispute with ANR Pipeline Company (ANR).

Because certain information in the Complaint was filed with the Commission in an ANR proceeding as Critical Energy Infrastructure Information (CEII), Northern requests privileged treatment of the enclosed Complaint and Attachments pursuant to 18 CFR§388.112 (2003). In accordance with 18 CFR §385.206, Northern has included an original and three (3) copies of its complaint with the CEII information and eleven (11) copies of the complaint without the CEII information. Appendix I contains a Protective Order based on the Commission's model protective order.

A diskette containing a form of notice for publication in the *Federal Register* and a hard copy of the form of notice are also enclosed.

Please acknowledge the receipt of this letter and enclosures by stamping and returning the six (6) receipt copies, three (3) copies of the complete Complaint with privileged information and three (3) copies of the redacted Complaint with privileged information redacted, to our courier. Thank you for your assistance in this matter.

Sincerely,

Dari R. Dorman

Enclosures

Disk/OSEC

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**FEDERAL ENERGY
REGULATORY COMMISSION**

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UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

Northern Natural Gas Company)	Docket No. RP04-__-000
)	
v.)	
)	
ANR Pipeline Company)	

COMPLAINT REQUESTING FAST-TRACK PROCESSING

Pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 C.F.R. §385.206, Northern Natural Gas Company (Northern) hereby files this complaint against ANR Pipeline Company (ANR). Further, pursuant to Rule 206(h), Northern requests that the Commission consider and process this Complaint under the fast-track process.

ANR is intending to place in service certain facilities on November 1, 2004 related to its West Leg Expansion pursuant to the proceeding in Docket No. CP02-434-000 ("West Leg Expansion"). ANR has now informed Northern that it intends to significantly increase the operating pressures on its system to higher than historical operating levels and well above the level identified in its West Leg Expansion. The change to the operation of its system will prevent ANR from receiving gas from Northern and prevent Northern from meeting its firm obligations to its shippers. ANR claims it is increasing pressures in order to serve its incremental shippers obtained through ANR's West Leg Expansion; however, the proposal to increase pressures was not made clear to Northern, Northern's and ANR's shippers, or the Commission in ANR's West Leg Expansion despite ANR's knowledge

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that Northern lacks the facilities to effectuate deliveries into ANR at Janesville at the higher operating pressures. ANR's proposal to increase pressures will create two specific problems: (1) existing firm customers of Northern and ANR at the Janesville interconnect will suffer degradation of service; and (2) competition in the Wisconsin market will be limited, rather than enhanced as represented by ANR in the certificate proceeding.

The parties have met to attempt to resolve the issue to no avail. The issue must be resolved well before November 1, 2004, the beginning of Northern's winter heating season, in order for Northern's shippers to finalize their supply sources and have the ability to utilize their firm entitlement. Without prompt Commission action, Northern's firm shippers will not be able to receive the benefit of their firm service.

I.

COMMUNICATIONS

All correspondence, communications, pleadings and other documents relating to this filing should be served upon each of the following persons:

J. Gregory Porter
Vice President and General Counsel
Dari R. Dorman
Senior Counsel
Northern Natural Gas Company
1111 So. 103rd Street
Omaha, NE 68124
(402) 398-7077

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II.

BACKGROUND

Northern's interstate pipeline system interconnects with the system of ANR at Janesville, Wisconsin. Northern has sold firm transportation service with delivery to Janesville for over twenty years. Through the Janesville interconnect, shippers in Wisconsin are able to access supplies from Canada and the lower 48 states, including Rocky Mountain gas, through use of Northern's pipeline. The Janesville interconnect provides an economic alternative to transporting on ANR's interstate pipeline system. Northern has sold firm deliveries at Janesville of up to 139,000 Dth/day for at least the past nine years. Northern's current firm service to ANR for deliveries to Janesville of 52,137 Dth/day is effective through October 31, 2004. Northern's service agreement with ANR requires Northern to deliver gas at an average minimum delivery point pressure of 450 psig, which was agreed to because of the lack of facilities in place on Northern's system to consistently deliver at a higher pressure. ANR previously released 34,375 Dth/day of twelve-month firm capacity to BP Canada Energy Marketing Corp. (BP). ANR terminated its remaining twelve-month firm capacity of 52,137 Dth/day effective November 1, 2004. Such capacity is currently posted as generally available on Northern's website. BP's capacity was posted for bids under Northern's ROFR process and is still in the ROFR process awaiting resolution of this issue. In addition, Northern currently has the following firm service agreements for deliveries at Janesville with terms beyond November 1, 2004: Madison Gas & Electric ("Madison") has firm delivery capacity at Janesville of 33,481 Dth/day during the months of March through November

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and 20,000 Dth/day during the months of December through February through 2011;¹ Wisconsin Power & Light has firm delivery capacity at Janesville of 10,000 Dth/day during the months of April through October through 2010.

III.

WEST LEG EXPANSION

ANR'S CERTIFICATE APPLICATION

On September 6, 2002, ANR filed its West Leg Expansion application with the Commission in Docket No. CP02-434-000 for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act for authorization to modify its facilities by constructing approximately 26.3 miles of 30-inch pipeline to loop its Madison Lateral, removing the existing 4-inch and 6-inch Beloit Lateral lines and replacing them with approximately 6.5 miles of 20-inch pipeline, and installing a meter station along with meter station upgrades and modifications. ANR stated that the expansion was to serve new power generation loads and meet existing customers' requirements as well as future growth in the Janesville area. As a result of the expansion, ANR stated that it would no longer be required to purchase firm transportation service on Northern, which ANR had used as an operational loop of its system. ANR stated in its application that the Northern capacity that ANR would turn back would "become available for long term contracting by other Wisconsin shippers and the market will see increased competition between the two pipelines."² Exhibit G to the application indicated that the pressure at Janesville would increase from 450 psig to 609 psig. Northern protested ANR's application based on, among other things, the financial impact

¹ Pursuant to a waiver granted by the Commission in Docket No. RP92-192-000, Madison may also use the Madison TBS as a primary delivery point for the same volume.

² ANR Application at p. 17.

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to Northern's system and its customers. Northern did not raise any operational issues because ANR's application did not indicate that there would be such a change to the pressure that the gas would not be able to flow from Northern to ANR (Northern can deliver into ANR at 609 psig). The Commission issued its Preliminary Determination on Non-Environmental Issues on December 26, 2002 and a final certificate on June 5, 2003.³ Based on the information provided by ANR, the Commission found that ANR's project was required by the public convenience and necessity in that it met the criteria set forth in the Commission's 1999 Policy Statement on New Facilities.⁴ The Commission found that ANR had the ability to terminate its two transportation contracts with Northern; revenues from the project would exceed expansion costs; the proposed project would provide system benefits by enabling shippers to access additional sources of supply; and that Northern's claims of harm were speculative because Northern might be able to sell the capacity that ANR would turn back on Northern. ANR has begun construction. As discussed below, many of the reasons which formed the basis for the Commission's approval of ANR's West Leg project are turning out to be based on incomplete information.

ANR's West Leg Expansion application indicated that pressures at the Janesville interconnect would change to 609 psig (Exhibit G)⁵. At this stated pressure, Northern can effectuate deliveries into ANR. There was no notice that the operating pressures would change to such a degree that gas would be unable to flow at the interconnect. There was

³ 103 FERC ¶61,297 (2003) (order issuing certificate and approving abandonment) and 101 FERC ¶61,376 (2002) (preliminary determination).

⁴ Commission's Statement of Policy on the Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶61,227 (1999), orders clarifying statement of policy, 90 FERC ¶61,128 and 92 FERC ¶61,094 (2000).

⁵ Exhibit G of ANR's North Leg project in Docket No. CP04-1 indicated that the pressure at Janesville would be 632.

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no indication that existing firm shippers at this interconnect would lose the reliability of their firm service as a result of ANR's West Leg Expansion. However, in discussions with ANR regarding operation of the interconnect for the upcoming winter heating season, ANR informed Northern that deliveries into ANR would be subject to ANR's new operating pressures and, once the West Leg Expansion goes into service on November 1, 2004, ANR's pressure would be between 650 to 750 psig with a MAOP of 975 psig. At one point, ANR told Northern that Northern would have to meet the MAOP of 975 psig. On August 19, 2004, ANR issued a non-critical notice on its website stating that, as a result of the West Leg Expansion, it would be operating its system in and around the Janesville area during the winter season within a range of 600 to 800 psig. This means that Northern's pressure must, on certain occasions, exceed 800 psig in order for gas to flow through the interconnect. Northern does not have the capability to consistently deliver volumes at the pressures necessary to overcome these higher pressures on ANR.

As a result of the uncertainty as to the operation of the interconnect, the capacity posted as a result of the termination of ANR's contract has not been sold because no shipper has been willing to purchase such firm capacity. ANR has also advised Northern that it will not confirm nominations from primary firm shippers at the Janesville interconnect if it does not believe Northern can deliver into ANR's system at the newly imposed operating pressures.⁶ Further, BP is unable to determine if it should extend its capacity that is currently in the ROFR process. As a result, Northern's shippers are denied the ability to have gas delivered into Wisconsin markets and ANR's shippers are

⁶ ANR appears to be relying upon a provision in its tariff which states: "Shipper shall cause the Gas to be delivered at the Receipt Point(s) at a pressure sufficient to allow the Gas to enter Transporter's existing pipeline system..." (Fourth Revised Sheet No. 123).

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denied competitive alternatives. Rather than increase transportation competition, ANR's abrupt departure from long-standing operational practices has degraded the reliability of firm service and effectively eliminated competition for certain Wisconsin markets, contrary to ANR's assertions in its West Leg Expansion certificate application.⁷

IV.

COMPLAINT

Certain facts involving ANR's West Leg Expansion were not included in its certificate application; the Commission, therefore, was not afforded the opportunity to make a fully informed decision on the impact of ANR's expansion. Northern did not raise the pressure issue because, based on ANR's statements, there was no notice that a pressure issue existed. ANR should not be allowed to degrade service to ANR's own shippers and Northern's firm shippers by changing the long-standing operation of its system in order to serve ANR's new customers. It is Northern's understanding that, in order to serve new markets upstream of the Janesville interconnect, ANR has made certain pressure commitments, which have specific and identifiable economic consequences if the pressures are not met. To honor these new commitments, ANR is increasing the pressure at Janesville to the detriment of existing shippers. Northern and the existing firm shippers on Northern and ANR at Janesville have made no changes to their requirements. The only change is ANR's modification of its operations. Northern and its shippers have relied upon ANR's long-standing operational practices and statements made to the Commission in its certificate application. Northern and the existing firm shippers should not have to bear the financial burden of ANR's decision to

⁷ West Leg Expansion application at p. 17.

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change its practices. ANR should be required to make further system modifications, if necessary, and to operate its system so that it can continue to accept the shippers' gas at the Janesville interconnect at either historical pressures or those pressures indicated in its certificate application.

Northern does not believe that its firm shippers should be stranded by actions of ANR that are beyond their control and of which they were unaware. Nor should Northern and its other customers be required to pay for extensive facility modifications to allow ANR to serve the new firm obligations entered into in connection with ANR's West Leg Expansion.

Had Northern been aware of ANR's intent to increase its operating pressure to 800 psig, Northern could have addressed the issue in ANR's West Leg Expansion application. Of course, neither Northern nor the Commission were made aware of ANR's plans during its certificate application. ANR's application did not mention the change in operation to the Janesville interconnect requiring a higher pressure, despite ANR's knowledge that the higher pressures would significantly limit the capability of ANR to receive gas from Northern at Janesville. In fact, ANR stated that the capacity on Northern would "become available for long-term contracting by other Wisconsin shippers." Now, after the Commission has approved the expansion, ANR announces pressure changes with a contrary result, i.e., that Northern will not be able to resell the capacity because ANR will not be able to consistently receive volumes from Northern even though Northern has made no changes to the manner in which it operates. With ANR's change to the pressure profile at Janesville, Northern will be unable to sell this capacity to other shippers, contrary to the representations in ANR's certificate

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application, and which effectively will increase ANR's market power in Wisconsin. In its Preliminary Determination on Non-Environmental Issues regarding the West Leg Expansion, the Commission stated: "we find the proposed expansion will enhance, not degrade, service to existing customers."⁸ Clearly, the shippers on ANR that are also firm shippers on Northern are adversely impacted. Madison has firm receipt capacity at Janesville on ANR's system of 15,000 Dth/day during the months of April and October and 21,000 Dth/day for May through September through October 31, 2008 and WP&L has 10,000 Dth/day of firm receipts at Janesville during the summer period through March 31, 2010. The West Leg Expansion adversely impacts these firm shippers on ANR because their gas may not be able to flow from Northern to ANR. Further, contrary to ANR's assertion otherwise, ANR's anticipated modification actually eliminates competition. Firm and interruptible shippers on ANR that previously were able to access supplies from Northern's system will no longer be able to do so. These shippers will be limited to supplies only from ANR's system. The modifications proposed by ANR will effectively eliminate Northern as a potential firm supplier into this point. By eliminating Northern as a potential pipeline supplier, Wisconsin customers will have one less supply alternative for firm gas supplies and competition and reliability will be degraded.

Had the Commission been aware of this impact, Northern believes that the Commission would have required ANR to address the issue prior to constructing or placing in-service the facilities. In Cove Point LNG Limited Partnership, 97 FERC ¶61,043 (2001), Cove Point filed an application to reactivate and operate existing facilities at Cove Point's LNG terminal. Columbia Gas Transmission Corporation

⁸ 101 FERC ¶61,376, at 62,564.

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(Columbia) filed comments in the proceeding questioning whether imbalances at the interconnect between Cove Point and Columbia could be handled by an OBA since, once the LNG facilities became operational, the pressure at the interconnect would be increased and Columbia would not be able to physically deliver the volumes to Cove Point. Columbia stated that it would be the party always owing gas to Cove Point and, thus, the imbalances could not be cured under its OBA with Cove Point. The Commission stated:

Cove Point and Columbia may negotiate new OBA terms to address Columbia's concerns regarding the ability of the current OBA to resolve imbalances in light of increased operating pressure on Cove Point. In the event the parties cannot reach mutually acceptable terms, Cove Point will be required to make a filing at least 90 days prior to the in-service date for these facilities. If Columbia's concerns are misplaced, Cove Point must include in its filing an explanation why and provide detailed operational and engineering information to support its position. Parties will have 30 days thereafter to file responses. Thus, the certificate granted by this order will be subject to a condition requiring Cove Point to address the concerns raised by Columbia that could affect the flexibility of shippers on Columbia and Cove Point. In the event the parties are unable to reach agreement and the Commission finds that there are outstanding material issues over how imbalances are to be addressed, the Commission will take further action necessary to assure appropriate resolution before pressure is increased on Cove Point's system.⁹

Just as in Cove Point, ANR has modified its system for its own benefit. The extent and the impact of the modifications were pertinent facts that should have been raised in ANR's certificate application so that other parties and the Commission could properly determine whether ANR's modifications were in the public convenience and

⁹ Cove Point LNG Limited Partnership, 97 FERC ¶61,043 at 61,204. The situation in this case is distinguishable from the facts in Guardian Pipeline, L.L.C., 91 FERC ¶61,285 (2000) and Order on Rehearing and Issuing Certificates, 94 FERC ¶61,269 (2001). In Guardian, Northern argued that it would not be able to deliver gas at a delivery point off of Northern's system because of the pressure change resulting from the proposed Guardian interconnect. The Commission determined that Northern could meet its firm contractual obligations even at the higher pressure. In the present situation, firm transportation volumes to Janesville will not be able to flow into ANR's system. In addition, Northern's firm obligation to shippers having ROFR rights to the capacity is in question.

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necessity. In making its decision, the Commission certainly would have found it important to consider the impact on existing firm shippers that receive gas from interconnecting pipelines and the erection of barriers to competition. ANR cannot now argue that it is the problem of Northern and Northern's and ANR's shippers to overcome ANR's increased pressures when the extent of the increased pressures was not disclosed by ANR and the impact of such increased pressures was not discussed, despite ANR's knowledge that Northern's system, as currently configured, could not overcome such higher pressures.

With the additional information that Northern now has, it is clear that ANR's West Leg Expansion would not have been in the public convenience and necessity without requiring ANR to maintain long-standing historic pressures at Janesville. The Commission should prohibit ANR from modifying the operation of the Janesville interconnect to the detriment of Northern and Northern's and ANR's shippers. The Commission should direct ANR to either (1) modify its system to meet its firm load without increasing the pressures at Janesville higher than the 609 psig identified in the West Leg Expansion application or (2) agree to hold on an OBA, and subsequently resolve, all imbalances created at the Janesville interconnect associated with Northern delivering up to the historic firm level of 139,000 Dth/day when ANR cannot receive such volumes into its system because it has to operate at a pressure higher than its filed design day pressure of 609 psig.

Northern's complaint is not a collateral attack of the Commission's order granting ANR the certificate. Northern's complaint is that ANR is not complying with the certificate order which was granted based on the fact (which later turned out to be

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incorrect) that “the Northern capacity will become available for long-term contracting by other Wisconsin shippers and the market will see increased competition between the pipelines.”

IV.

RELIEF REQUESTED

Northern requests that ANR be precluded from changing the operation of its system at the Janesville interconnect with Northern and, instead, be required to operate its system at the pressures identified in its West Leg Expansion certificate application so as to enable gas to continue flowing from Northern’s system into ANR’s system in compliance with the Commission’s intent as expressed in its approval of the West Leg Expansion. If ANR cannot meet its pressure commitments that are identified in its agreement with its expansion shipper, Northern understands that ANR has economic remedies. ANR should be required to implement those economic remedies rather than degrade existing firm service. Alternatively, ANR should be required to commit to schedule firm volumes up to the historical firm level of 139,000 Dth/day and hold and resolve imbalances through an OBA. To the extent the remedy requires a temporary or partial revocation of the Commission’s authorization of the West Leg Expansion, Northern requests that such be granted.

VI.

REQUEST FOR FAST-TRACK PROCESSING

Pursuant to Rule 206 of the Commission’s regulations, Northern requests that the Commission act immediately to resolve the issue of the pressure at the Janesville interconnect as the winter heating season is quickly approaching and the issue must be

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resolved as early as possible in order for shippers to finalize their supply portfolios for their existing firm service and in order for shippers to purchase firm service on Northern to meet their winter requirements. Northern and ANR have been actively discussing the issue but have been unable to reach an accommodation. Therefore, Northern believes that any alternate dispute resolution would be ineffective.

These issues are not pending before the Commission in any other proceeding. Northern has contacted the Enforcement Hotline but has not attempted any other dispute resolution mechanisms. Despite months of discussions, Northern and ANR have been unable to resolve this matter informally. Given the parties' inability to resolve the issue, Northern does not believe that the ADR procedures under Rule 604 of the Commission's regulations will result in a timely resolution. Further, in light of the impending winter heating season, the Commission's standard processes for resolving this complaint will not be adequate and, therefore, Northern requests Fast-Track Processing.

VII.

CONCLUSION

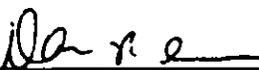
ANR's West Leg certificate application to expand its system to accommodate incremental firm load and to terminate its firm transportation on Northern failed to disclose pertinent facts. The Commission approved the application in reliance on inadequate facts. As a result, Northern and firm shippers on both Northern and ANR are negatively impacted. ANR should be prohibited from changing the long-standing operation of its system to the detriment of Northern and the impacted shippers.

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WHEREFORE, for the forgoing reasons, Northern respectfully requests that the
Commission grant the relief requested herein.

Respectfully submitted,

NORTHERN NATURAL GAS COMPANY

By 

Dari R. Dorman
Senior Counsel
J. Gregory Porter
Vice President and General Counsel
P. O. Box 3330
Omaha, Nebraska 68103-0330
(402) 398-7077

Of Counsel:
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Steve Stojic
Gallagher, Boland & Meiburger, L.L.P.
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Suite 900
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(202) 289-7200

Dated: September 30, 2004

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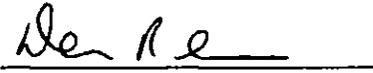
CERTIFICATE OF SERVICE

Pursuant to the requirements of Rule 206(c) of the Commission's regulations, I hereby certify that I have contemporaneously with the filing of the foregoing "Complaint Requesting Fast-Track Processing" served it upon the Respondent by express delivery and by faxing a copy to:

Marguerite N. Woung-Chapman
General Counsel
Fax: (832) 676-2251

Richard W. Porter, Director
Rates and Regulatory Affairs
Fax: (832) 676-2231

Dated at Omaha, Nebraska this 30th day of September 2004.



Dari R. Dornan

Northern Natural Gas Company
COMPLAINT REQUESTING FAST-TRACK PROCESSING
FERC Docket No. RP04-____-000
Filed September 30, 2004

ATTACHMENT 1

**ANR Pipeline Company
WestLeg Project
Docket No. CP02-434-00**

**Application for a Certificate of Public
Convenience and Necessity
And
For Authorization to Abandon
Pipeline Facilities**

Public



ANR Pipeline
an El Paso company

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ANR Pipeline Company
WestLeg Project
Docket No. CP02-434-000

APPLICATION FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY
AND
FOR AUTHORIZATION TO ABANDON
PIPELINE FACILITIES

Public



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FEDERAL ENERGY REGULATORY COMMISSION
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Ma. Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: ANR Pipeline Company
WestLeg Project
Docket No. CP02-434-000
Contains Privileged Information - Do Not Release - PL02-1

Dear Ma. Salas:

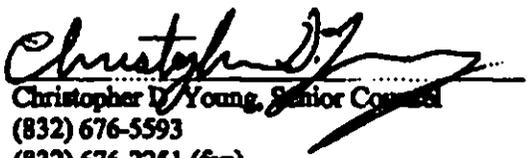
ANR Pipeline Company ("ANR"), pursuant to Sections 7(b) and 7(c) of the Natural Gas Act and the Federal Energy Regulatory Commission's ("Commission") Rules and Regulations thereunder, hereby submits an original and fourteen (14) copies of an application requesting a certificate of public convenience and necessity authorizing the construction of the WestLeg Project, as well as a computer diakkette containing the required electronic data.

Pursuant to 18 C.F.R. § 388.112, ANR requests privileged treatment of Volume II of the Environmental Report which includes maps, alignment sheets, flow diagrams and other sensitive information. ANR submits this request because it believes that in light of security concerns regarding the disclosure of critical energy infrastructure information and pursuant to the Commission's directive in PL02-1, Volume II of the Environmental Report, which contains detailed maps and description of the proposed facilities, includes information that is privileged. ANR therefore requests that the Commission treat Volume II as privileged and non-public material. Accordingly, ANR encloses herewith one copy of Volume II of the Environmental Report and fourteen (14) copies of the Application and Volume I of the Environmental Report

The electronic version of the Environmental Report and the Environmental Construction Plan are contained on the enclosed compact disc.

Respectfully submitted,

ANR Pipeline Company


Christopher D. Young, Senior Counsel
(832) 676-5593
(832) 676-2251 (fax)

Attachments

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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

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**FEDERAL ENERGY
REGULATORY COMMISSION**

In the Matter of)

ANR Pipeline Company)

Docket No. CP02-434-000

**APPLICATION OF ANR PIPELINE COMPANY
FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND FOR
AUTHORIZATION TO ABANDON PIPELINE FACILITIES**

Pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, 15 U.S.C. §§ 717f(b) and 717f(c), as amended, and Subpart A of the Regulations of the Federal Energy Regulatory Commission, 18 C.F.R. Sections 157.5 et seq., Subpart A, ANR Pipeline Company ("ANR") hereby submits an application for authority to construct a total of approximately 26.3 miles of 30-inch pipeline loop of its Madison Lateral pipeline ("Madison Lateral Loop") and to remove the existing 4-inch and 6-inch Beloit Lateral lines and replace them with approximately 6.5 miles of 20-inch pipeline ("Beloit Lateral Replacement"). The facilities to be constructed (hereinafter referred to as the "WestLeg Project") are intended to serve new power generation loads and meet the growth of demand in the local distribution company ("LDC") sector in Rock and Dane Counties, Wisconsin, as well as existing customers' requirements in the Janesville area.

ANR requests that the Commission grant the requested authorizations by July 1, 2003, so that ANR can place the WestLeg Project in service by November 1, 2004.

In support of this application, ANR states as follows:

L

GENERAL INFORMATION

The exact legal name of ANR is ANR Pipeline Company. ANR is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at Nine E. Greenway Plaza, Houston, Texas 77046.

ANR Pipeline Company, a subsidiary of El Paso Corporation, operates approximately 10,600 miles of interstate pipeline. Its system extends from Texas and Oklahoma as well as the producing areas in the Gulf Coast to points in Wisconsin and Michigan including an international boundary crossing near Emerson, Manitoba, Canada. ANR provides storage, transportation, and various capacity-related services to a variety of customers in both the United States and Canada.

L

CORRESPONDENCE AND COMMUNICATIONS

All correspondence and communications with respect to this application are to be sent to the following persons:

Marguerite N. Woung-Chapman
General Counsel
*Christopher D. Young
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Houston, Texas 77046
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Fax: (832) 676-2251

Richard W. Porter, Director
Rates and Regulatory Affairs
*Veronica Hill
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*Howard L. Nelson
Senior Counsel - Pipelines
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Tel. (202) 637-3543
Fax (202) 637-3501

*Michael D. Moore
Director, Federal Agency Affairs
El Paso Corporation
555 11th Street, N.W., Suite 750
Washington, DC 20004
Tel. (202) 637-3537
Fax (202) 637-3501

(*Person designated for service in accordance with Rule 203 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 395.203) ANR requests that the Commission waive Rule 203(b)(3) to allow four persons to be designated to receive service.

Any questions regarding this filing may be directed to the undersigned at (832) 676-5593.

III.

BACKGROUND

As stated above, the WestLeg Project will create new capacity on ANR's pipeline system that will, among other things, accommodate the demand for new power generation facilities and future load growth from the LDC sector and other customers and will improve operational flexibility and reliability for that portion of ANR's system that serves the Janesville and Madison areas. Wisconsin Power and Light Company ("Wisconsin Power and Light") has executed a precedent agreement with ANR for transportation and delivery of 60 thousand dekatherms per day ("Mdtb/d") to its system at the Tiffany East Meter Station to be located on the Beloit Lateral.¹ This commitment is necessary to meet the fuel requirements of a 600-megawatt power plant, the Riverside Energy Center,² that will be served by Wisconsin Power and Light. The Riverside Energy Center is being developed in response to a request for proposals issued by Alliant-Wisconsin Power & Light in April 2000. The Riverside Energy Center is currently being reviewed by the Public Service Commission of Wisconsin and the Wisconsin Department of Natural Resources and is expected to begin commercial operation by summer 2004. ANR and another customer are also currently in negotiations regarding 34 Mdtb/d of the capacity.

¹ Since this customer requests service within a 16-hour day allowed by Rate Schedule FTS-3 the pipeline must reserve 150% of the requested capacity to meet the customer's requirement. In this case that value is 90 Mdtb per day, (i.e. 150% x 60 = 90).

² The power plant is being constructed by Calpine Corporation.

Additionally, the project will provide capacity that will allow ANR to terminate two transportation agreements with Northern Natural Gas Company ("Northern") that obligate ANR to pay for transportation service for 86.5 Mdt/d. Adding the 86.5 Mdt/d of expansion capacity that will be utilized by existing contracts to the 124 Mdt/d of new contracts results in the subscription of 210.5 Mdt/d of the 220 Mdt/d expansion.

As part of ANR's Order 636 Compliance, the Commission authorized ANR to retain two Northern firm transportation contracts for operational purposes. These two contracts have historically provided firm gas supply receipts at ANR's Janesville Wisconsin receipt point. One contract transports gas from Ventura, Iowa to Janesville, Wisconsin and is used to support the transportation of gas supplied from the Dakota Gasification Company ("Dakota Contract"). The other contract provides transportation from Greensburg, Kansas to Janesville, Wisconsin, which provides an operational loop of ANR's Southwest Mainline and supports existing Wisconsin system operations ("Operational 858 Contract"). Currently, the Madison Lateral is bottlenecked on its southern extremity where it branches off from the Wisconsin Mainline. Once the Madison Lateral Loop expansion is completed, ANR will be able to provide the Janesville area deliveries that are currently accomplished by the Dakota and Operational 858 contracts using capacity that is or will be available on the Wisconsin Mainline, which is directly connected to ANR's Joliet Hub and Southwest Mainline.

The WestLeg Project, as more fully described below, is designed to provide total mainline capacity of 220 Mdt per day and will enable ANR to provide an incremental 133.5 Mdt per day of natural gas to the Janesville area. This new capacity will serve both existing customers' needs currently provided via the Northern contracts and new customer needs for

power generation loads and growth of the LDC market. The estimated cost of the project is \$42,087,000.

IV.

DESCRIPTION OF PROPOSED FACILITIES

ANR requests that the Commission issue a certificate of public convenience and necessity that authorizes:

- (1) The construction of the Madison Lateral Loop,
- (2) The construction and abandonment of pipeline facilities referred to herein as the Beloit Lateral Replacement, and
- (3) Meter station installation and meter station upgrades and modifications.

Madison Lateral Loop

The proposed Madison Lateral Loop will be constructed of 30-inch pipeline and will extend approximately 26.3 miles from an interconnect with ANR's mainline in McHenry County, Illinois to a location slightly east of the city of Janesville in Rock County, Wisconsin. The new line will be installed adjacent to the existing Madison Lateral that, in this area, consists of a 10-inch and a 12-inch pipeline.

Beloit Lateral Replacement

The Beloit Lateral is currently comprised of four pipelines, a 4-inch, a 6-inch, an 8-inch and a 12-inch pipeline. ANR proposes to abandon by removal the 4-inch and the 6-inch lateral lines and install a new 20-inch lateral. The new lateral will extend approximately 6.5 miles in a southwesterly direction from the Madison Lateral toward Beloit, Wisconsin and will be located entirely within Rock County, Wisconsin.

Meter Stations

ANR proposes to install a new meter station, the Tiffany East Meter Station, on and adjacent to ANR's existing Tiffany Meter Station site. This site is located on the southwestern portion of the Beloit Lateral. The facilities that comprise the existing Tiffany Meter Station will remain in place and continue to serve Wisconsin Power and Light's LDC system. The new Tiffany East Meter Station will include two ultrasonic meters, a 6-inch and an 8-inch, to handle normal to peak flow conditions and a 2-inch turbine meter to accommodate low flow operating conditions. The installation will include electronic gas measurement and other associated appurtenances (See Exhibit Z-1 for a listing of appurtenances and auxiliary equipment.) This new meter station will accommodate delivery of up to 120 MMcf per day to Wisconsin Power and Light's distribution system.

ANR proposes to upgrade its existing South Madison Meter Station increasing its capacity by 25 MMcf per day. ANR will replace the station's existing 1-inch, 4-inch and 8-inch turbine meter runs with a 4-inch and a 10-inch ultrasonic meter for normal to peak flow conditions and a 2-inch turbine meter to accommodate low flow operating conditions. The installation will include electronic gas measurement and other associated appurtenances. (See Exhibit Z-1 for a listing of appurtenances and auxiliary equipment.)

ANR also proposes to make minor modifications at its North Madison Meter Station. ANR proposes to only make changes to measurement control settings within the station. This will require only recalibration of measurement equipment and installation of transmitters. These changes will not result in a change of capacity of the meter station.

In order to assure that ANR can serve the Wisconsin Power and Light requirements in a timely manner, ANR requests that the Commission issue a certificate of public convenience and

necessity by no later than July 1, 2003, to allow ANR sufficient time to complete the work described herein by November 1, 2004.

V.

MARKET SUPPORT

The 220 Mdth of capacity allowed by WestLeg is broken into two-parts: (1) 86.5 for existing service and (2) 133.5 of newly available capacity. Almost 67% of the 133.5 Mdth of newly available capacity is supported by a signed precedent agreement with Wisconsin Power and Light (attached as Exhibit I).³ Additionally, ANR is in the final stages of negotiation with another customer for approximately 25% of the newly available capacity. (ANR will supplement Exhibit I of the instant filing with a copy of the signed precedent agreement immediately upon execution of that document.)⁴ Thus, ANR expects that 92% of the incremental capacity will be subscribed shortly. Moreover, counting the 86.5 Mdth to be used for existing service (discussed further in the Rates Section below) means that over 95% of the total new capacity is taken.

ANR began its open-season for this project on May 1, 2001 and closed it on June 1, 2001. ANR held a reverse open-season from August 1, 2002 to August 7, 2002. No customer offered to turn-back capacity during this process.

³ The Precedent Agreement requires that ANR have 60,000 of turnback capacity available to provide this service. Upon Commission approval of the restructuring of the Wisconsin Electric Power Company and Wisconsin Gas Company contracts filed on August 6, 2002, ANR will consider the 60,000 of the turned back capacity from that restructuring to be contracted for by WPL. This capacity and the other capacity contracted for by WPL will only be available for contracting by other shippers without ROFR attaching.

⁴ While ANR expects to have a final agreement shortly, it does not consider the certificate application to be at all dependent on this contract. ANR is making this potential agreement part of the application only out of consideration that it should make a full disclosure of the present circumstances concerning the project. Further, ANR is not and will not hold any existing capacity off the market to support this agreement prior to this precedent agreement being signed.

VL

RATES AND TARIFF

Rates

ANR intends to operate these facilities as an integrated portion of its mainline system. Capacity on the proposed facilities will be sold, nominated and scheduled in the same manner as is capacity on the existing facilities. The proposed facilities will be wholly located within ANR's Mainline Northern Segment, also known as ML-7. As such, ANR intends to use the currently effective ML-7 maximum rates as the recourse rates for service on the proposed facilities.

Costs of Service

a. Long Term Recovery

The annual cost of service of these facilities is \$7.9 million in the first year of operation on a facility cost basis. Exhibit N demonstrates the three ways that ANR expects to recover this cost of service. First is the revenues that will be received from the transportation agreements with the Wisconsin Power and Light of \$4.1 million per year. Second is the revenues expected to be received from the agreements presently being negotiated with a third-party with revenues of \$0.9 million for the first year, increasing to \$1.1 million in the second year.⁵ Third is the cost savings resulting from termination of the Northern contracts of approximately 8.3 million.

ANR will discuss in detail below how it expects the cost reductions from terminating the Northern contracts to be accounted for. The long-term justification for the WestLeg Project is simpler. The Project uses the existing system to provide an inexpensive expansion for deliveries

⁵ 9.5 MDth of expansion capacity is still available outside of this expected agreement. While ANR does not presently have an identified prospective customer, it expects that the active load growth in this area means that this capacity will be subscribed prior to the in-service date of these facilities.

into Wisconsin. On a unit basis, the estimated cost of service for the WestLeg facilities yields a 100% load factor rate of approximately \$0.10 per Dth without consideration of the cost savings from terminating the Northern contracts. The maximum recourse rates for deliveries service in the Northern segment is approximately \$0.15 per Dth. ANR incurs approximately \$11.3 million per year in demand and commodity charges, or about \$0.36 per Dth for service under the Northern contracts. Thus, as shown in Exhibit N, the construction of WestLeg will provide a lower cost alternative for ANR shippers and promote long-term rate stability. It will also provide improved operational efficiency and flexibility.

b. Short-term Recovery

Currently, ANR utilizes its Northern contracts and has the opportunity to recover their costs primarily through two mechanisms:

- 1) The Dakota Surcharge as set out in Section 28.1(c) of the General Terms and Conditions ("GT&C") of ANR's tariff; and
- 2) as Operational Account No. 858 costs included in ANR's base tariff rates (See Section 29(a) (1) of GT&C).

In regard to the Dakota Contract, ANR's Order of Discounting (See Section 28.6(a) of GT&C) provides that ANR's base tariff reservations rates are discounted prior to the Dakota Reservation Surcharges consistent with the Commission's Natural Policy⁶ for attribution of recovery of these transition costs. Thus, under Commission policy ANR recovers the Dakota Surcharges prior to recovering its base rate. In contrast, in regard to the Operational 858

⁶ Natural Gas Pipeline Company of America, 69 FERC ¶ 61,029 (1994); order on reh'g., 70 FERC ¶ 61,317 (1995).

Contract, Account No. 858 costs held for operational purposes are accorded treatment under the Commission's traditional discount policy.⁷ The tracking mechanism associated with Account No. 858 costs that is now contained in Section 29 of the GT&C reflects ANR's inclusion of these costs in its base rates.

After ANR places WestLeg in service and terminates the Northern contracts, the Dakota Reservation Surcharge shall be reduced in accordance with Section 28.1(c) and in particular Section 28.1(c) (6) which adjusts the surcharge every three months on March 1, June 1, September 1, and December 1 of each year. (A copy of Section 28.1(c) of the GT&C is included for informational purposes in Exhibit Z-2.) As the Dakota Contract is directly recognized in the mechanism as an actual Dakota cost, the Dakota surcharge will be reduced starting in the first filing covering the month after termination.

The cost of the Operational 858 Contract is presently part of ANR's base rates. A change to that representative level is recognized under the Deferred Transportation Cost Adjustment Provision (Section 29 of GT&C which is included for informational purposes in Exhibit Z-2). Under this provision, a filing to place in effect a Deferred Cost Adjustment is required only when the level of annual costs vary by more than 10% of the representative level of \$40.7 million. ANR cannot at this time know the exact level of costs to be considered at the time of the termination of the Operational 858 Contract.⁸ As of July 1, 2002, the previous twelve months costs of ANR's operational Account No. 858 Transportation Contracts were approximately \$39

⁷ ("Account No. 858 costs at issue here are not Order No. 636 transition costs, but relate to upstream capacity retained by Algonquin for operational use and are embedded in Algonquin's base rates. Accordingly, the policy announced in Natural does not apply to the Account No. 858 costs at issue here.") Algonquin Gas Transmission Company, 69 FERC ¶ 61,105 (1994).

⁸ The amount can vary based on changes in rates of the other pipelines providing the service or if the rates of replacement or renewed contracts are different from the existing rate.

million. It is anticipated that the termination will result in annual savings of approximately \$8.3 million per year. When the savings are recognized in the Deferred Cost Account, assuming other Account No. 858 contract costs do not materially change, the filing of a Deferred Transportation Cost Adjustment ("Adjustment Filing") will be triggered pursuant to the provisions of Section 29(a)(2) and (3) of the GT&C.⁹ The resulting Adjustment Filing would reflect a negative adjustment to ANR's rates. Any credits due to shippers would be provided in accordance with the Deferred Cost Adjustment mechanism, the rate and provisions of shipper's contracts and ANR's order of revenue attribution. Shippers paying maximum recourse rates and surcharges pursuant to their contracts will see the full reduction in their monthly bills. Conversely, shippers paying rates discounted below the level necessary to recover these costs or paying negotiated rates will not see any further reduction in their monthly bills. Shippers whose discounted rates are between these two levels will receive a further partial benefit.

As previously explained, the long-term justification for the WestLeg facilities are based on the inexpensive expansibility that the facilities offer. However, prior to ANR's next rate case and therefore before the cost of these facilities can be rolled into the base rate, ANR and, as discussed above, a number of its shippers, will realize cost savings from the termination of the Northern Contracts. In order to both recognize that benefit in the short term and illustrate some of the long term value of the WestLeg project to ANR and its shippers, ANR considers that the full value of the Operational 858 Contract should be recognized as a credit to the cost of service of this project (see Exhibit N). In this fashion, the cost reduction of \$8.3 million has a similar

⁹ ANR would file an adjustment to be effective May 1, of the year following, an annual cost reduction in excess of the 10% threshold of \$4.1 million.

effect as revenues from transportation contracts.¹⁰ The existing transportation will no longer take place in association with the Northern contracts but instead will use the WestLeg facilities and the Wisconsin Mainline.¹¹ As shown in Exhibit N, the full cost of service of these facilities is recovered and all of the incremental service and revenues act as a positive system benefit. In these circumstances, rolling in the costs of these facilities is clearly warranted in ANR's next rate case.¹²

c. Financial Certainty

As discussed and as shown in Exhibit N, the proposal to construct the WestLeg project clearly meets the Commission's standards for granting a certificate of public convenience and necessity. However, because of the financial risk involved in building a project of this nature, ANR must seek some certainty regarding the proposals herein. ANR is not seeking additional revenues from shippers to pay for 86.5 Mdth day of capacity presently served by the Northern contracts. It is, however seeking assurance that shippers cannot expect to receive an additional discount when the contract rate that they pay already has discounted the costs of the Northern contracts. No shipper should expect ANR to provide a steeper discount by virtue of the Section 29 mechanism as any such requirement would amount to ANR discounting that component of the base rates twice. ANR requests that the Commission confirm that ANR's mechanism and

¹⁰ Revenues from existing contracts cannot be directly assigned since particular existing contracts cannot be directly attributed to the Northern contract and consequently to this project. Thus, the credit acts to properly show the support the project gives to the existing service and operations of ANR system.

¹¹ Moreover, as explained below, the WestLeg facilities do not just replace the Northern capacity but offer additional operational benefits to ANR's system not available from having the contracted capacity.

¹² The Commission has previously approved the retention of the savings from terminating Account No. 858 contracts as justification for granting of a certificate of public convenience and necessity and the later cost reductions as justification for rolling in the costs of the facilities into the rate base. Dominion Transmission, Inc., 93 FERC ¶ 61,095 (2000).

order of discounting were not affected when the Commission changed its policy in Natural and that the Section 29 mechanism will be allowed to function as designed. Thus, only those shippers that pay the costs of the Operational 858 contract would see an adjustment to their monthly bills as a result of the application of ANR's revenue attribution order pursuant to a filing under the Deferred Transportation Cost Adjustment Provision.

VII.

ENVIRONMENTAL MATTERS

ANR includes herewith its Environmental Report as Exhibit F-I to this application. The Environmental Report has been prepared in accordance with the Commission's Regulations at 18 C.F.R. Part 380, and in accordance with the Office of Pipeline Regulation's "Guidelines for the Preparation of Environmental Reports." The proposed project primarily consists of the construction, abandonment, removal and installation of pipeline facilities, and the upgrading of certain meter stations. The installation of these facilities will occur for the most part within existing meter station properties and existing rights-of-way. The Madison Lateral Loop and the Beloit Replacement will be constructed primarily within existing right-of-way, and previously disturbed areas, and in open agricultural areas. Construction and operation of the Madison Lateral Loop will require that ANR increase its permanent right-of-way by only 12 acres. No additional permanent right-of-way will be required for the Beloit Replacement.

ANR has consulted with the National Marine Fisheries Service ("NMFS"), the United States Fish and Wildlife Service ("FWS"), the Wisconsin Department of Natural Resources ("WDNR") and the Illinois Department of Natural Resources ("IDNR"). The various species (plant and animal) that may occur in the area affected by the proposed construction are listed in the enclosed Environmental Report, Resource Report 3. NMFS concluded that no species within

its jurisdiction will be impacted. ANR's surveys indicate that no threatened or endangered species identified by FWS exist in the area of concern. The survey results have been provided to FWS for its final review. ANR has conducted follow-up surveys and site meetings with the state agencies. The final results of all related surveys and consultations will be provided to the Commission as they become available or are concluded.

ANR has completed initial Phase 1 cultural resource surveys in Illinois and Wisconsin. The field survey reports are included in Volume II of the enclosed Environmental Report, Resource Report 4. On August 30, 2002, ANR filed the final survey reports with the appropriate state historical preservation officer ("SHPO") for review and approval. The cultural resources inventory identified 18 recorded archeological sites and/or historic resources occurring in or near the area possibly affected by construction. Of these, only one historic resource, in Wisconsin, may be eligible for the National Register of Historic Places. Based on the preliminary information provided to the Illinois and Wisconsin SHPOs, no additional cultural resource investigations were recommended for the project. In October 2001, and as part of the assessment of cultural resources, ANR identified and requested comments from ten Native American tribes or groups. These tribes and/or groups are identified in Resource Report 4. To date, three responses have been received. None request further action or information from ANR.

As detailed in the Environmental Report, the proposed project incorporates proven construction practices and mitigation procedures, and will not result in a significant adverse effect on the environment.

Wisconsin Power and Light proposes to construct in conjunction with this project a new distribution line that will serve the Riverside Energy Center. The line will be 20 inches in diameter and will extend from ANR's proposed Tiffany East Meter Station to the new power

plant, a distance of approximately 6 miles. ANR is providing to Wisconsin Power and Light a contribution in aid of construction in the amount of \$5.5 million for the construction of this distribution line.

The project will affect 189 parcels of land and 133 landowners. ANR has acquired a great majority of the required permanent easements. This is due in large part to the nature of the project (i.e. looping and replacement). The following chart shows the present state of right of way acquisition.

Project Segment	Parcels Acquired	Length (feet) Acquired	Percentage Acquired
Beloit Lateral	25	33,621	100%
Madison Loop, Illinois	50	28,661	88%
Madison Loop, Wisconsin	103	99,460	97.5%
Tiffany East M/S	1	1	100%

VIII.

PUBLIC CONVENIENCE AND NECESSITY

ANR respectfully submits that its proposal is required by the public convenience and necessity, and should be promptly authorized for the following reasons:

The WestLeg Project would provide an alternative for gas operationally required in the Janesville area by providing an economical and environmentally friendly incremental firm capacity for Wisconsin along ANR's Madison area pipeline system. The project will also provide natural gas for electric generation that will serve the growing needs of Wisconsin's electric utilities. In addition to meeting the market demand discussed in Part V above; the project will improve system reliability and flexibility. In particular, ANR is limited by the fact that the Northern contracts are a nominated service. Rather than just reacting to events on its system, ANR must submit a nomination in accordance with the GISB timeline. This nomination

requirement can create a long lag time and limit ANR's ability to respond to changing conditions on its system. In contrast, with WestLeg, ANR will have the facilities to react to its customers' needs at the time they are occurring. The proposed Madison Loop will relieve a bottle-neck between ANR's Wisconsin Mainline and the Janesville and Madison areas without adding compression. This will make new sources of supply available to customers in these areas. As a result of the Madison Loop, system pressure will increase on the Madison Lateral. Currently, the 12-inch and 10-inch lines provide limited linepack to manage the hourly transient flow associated with the winter heating and power generation loads. The addition of the 30-inch loop line will create a large new pressure bottle that is ideally situated near the markets to accommodate the intraday market swings. Reliability will also be enhanced because a third loop will reduce the potential impact of outages for maintenance and inspections. Additionally, the WestLeg project provides a competitive alternative to ANR's use of a portion of Northern's system by substantially reducing the costs required for the transport.

The construction of the proposed facilities would be consistent with the Commission's policy regarding the certification and pricing of new pipeline construction projects.¹³ As a threshold matter under that policy, and as demonstrated by the precedent agreement included herein, projected revenues and attributed credits will exceed the projected cost of these facilities, and therefore this project will "stand on its own financially" and will not rely upon any financial subsidies. In addition, the proposed facilities will minimize any adverse impacts upon the two most important "potentially affected interests" that are identified in the Commission's policy: (1) there will be no adverse impact but instead both immediate and long-term benefits for

¹³ *Certification of New Interstate Natural Gas Pipeline Facilities, Statement of Policy*, 88 FERC ¶ 61,227 (1999), *order in clarification*, 90 FERC ¶ 61,128 (2000).

existing ANR customers from the project; and (2) construction along or adjacent to ANR's existing right of way will mitigate impacts upon the interests of landowners. Moreover, while ANR will no longer be contracting for service on Northern, the Northern capacity will become available for long-term contracting by other Wisconsin shippers and the market will see increased competition between the two pipelines. The cost and operational benefits that will inure to ANR's existing customers, in addition to the benefits that will result from increased competition, clearly outweigh any adverse impact on Northern.

Request for a Preliminary Determination

As the construction of WestLeg needs adequate assurance concerning cost recovery, ANR requests that the Commission issue a preliminary determination (PD) covering the financial and cost recovery issues identified in this application and any subsequent comments. In particular, in an order approving a settlement, the Commission has previously approved of a pipeline's use of Account No. 858 cost saving to support the cost of new construction.¹⁴ ANR has clearly shown the benefits resulting from constructing the WestLeg facilities and terminating the Northern contracts. Thus, ANR submits that it is appropriate that the Commission find that: (1) ANR is properly treating the discounting of Account No. 858 costs in ANR's base rates; (2) ANR is properly attributing the cost reduction from terminating the Northern Contracts; and (3) shippers receiving large discounts, as described previously, will not receive any further reduction in their contract rates under the Deferred Transportation Cost Adjustment mechanism. Further, to allow for the proper planning involved in any alternative arrangements for all parties if this project is unable to go forward, ANR requests that the Commission issue a PD no later than December 18, 2002.

¹⁴ Dominion Transmission, Inc., 93 FERC ¶ 61,095 (2000).

Separation of Tiffany East Meter Station from the Final Certificate

ANR is filing the construction of the meter station at Tiffany East and the replacement of the 4-inch and 6-inch lines with the 20-inch line along the Beloit Lateral as well as the Madison Loop as one project. However, the meter station upgrade alone would clearly be allowed as a blanket certificate project, if it were not associated with the larger project. The Riverside Energy Center will require access to test gas in the spring of 2004. If the Commission issues a final Order by the requested date of July 1, 2003 then ANR will complete the meter station in early 2004 and ANR requests only that the Commission allow the meter station to be constructed and placed into service prior to the rest of the WestLeg facilities. However, if the Commission believes or finds that it is unable to issue a final Order on the complete WestLeg Project by July 1, 2003, ANR requests that either the Commission find that the meter station can be severed from the WestLeg Project and constructed under ANR's blanket certificate or that the Commission can issue a phased certificate and authorize the meter station prior to issuing a certificate for the whole project.

The Commission has approved construction of a meter station outside of the confines of a larger project under similar circumstances.¹⁵ Here, ANR is able to completely supply the plant test gas on an interruptible basis solely with the upgraded meter station. ANR is willing to construct the meter station for service to WPI, regardless of whether the Commission authorizes construction of the WestLeg Project. The meter station will not only allow the Riverside Energy Center to receive test gas, but would allow the full delivery of the gas necessary to operate the plant on an interruptible or secondary basis. In these circumstances, the Commission should find

¹⁵ Tennessee Gas Pipeline Co., 97 FERC ¶ 61, 184 (2001). See also Caprock Pipeline Co., 65 FERC ¶ 62,134 (1993).

that ANR can construct the meter station under its blanket certificate authority if it has not received certificate authority for the WestLeg Project prior to July 1, 2003.

IX.

EXHIBITS

Pursuant to the Rules of Abbreviated Applications under Section 157.7 of the Commission's regulations (18 C.F.R. § 157.7), the following lists the exhibits for this Application required by Sections 157.14 and 157.18 of the Commission's Regulations under the NGA. In accordance with Section 18 C.F.R. § 157.14, the following exhibits are submitted or, where noted, incorporated by reference from previous filings:

- Exhibit A** **Articles of Incorporation**
Submitted as Exhibit A to ANR's application at Docket No. CP02-87-000 and incorporated herewith by reference.

- Exhibit B** **State Authorization**
Submitted as Exhibit B to ANR's application at Docket No. CP02-87-000 and incorporated herewith by reference.

- Exhibit C** **Company Officials**
Submitted herewith.

- Exhibit D** **Subsidiaries and Affiliation**
Submitted herewith.

- Exhibit E** **Other Pending Applications and Filings**
Omitted.

- Exhibit F** **Location of Facilities**
Submitted as Appendix C to the Environmental Resource Report, Volume II, and submitted under separate cover.
- Exhibit F-I** **Environmental Report**
Submitted herewith as Environmental Resource Report, Volumes I and II.
- Exhibits G** **Flow Diagrams Reflecting Design Capabilities**
Submitted herewith in Volume II - Confidential Appendices Environmental Resource Report.
- Exhibit G-I** **Flow Diagrams Reflecting Maximum Capabilities**
Submitted herewith in Volume II - Confidential Appendices Environmental Resource Report.
- Exhibit G-II** **Flow Diagram Data**
Submitted herewith in Volume II - Confidential Appendices Environmental Resource Report.
- Exhibit H** **Total Gas Supply Data**
Omitted. Gas supply data is not relevant to this project.
- Exhibit I** **Market Data**
Submitted herewith.
- Exhibit K** **Cost of Facilities**
Submitted herewith.
- Exhibit L** **Financing**
Omitted. The proposed facilities will be financed by ANR with funds on hand, funds generated internally, borrowing under revolving credit agreements, or short-term financing which will be rolled into permanent financing.
- Exhibit M** **Construction, Operation and Management**
Omitted. The proposed facilities will be constructed by one or more independent pipeline construction firms or by ANR employees. The facilities will be operated and managed by ANR employees.
- Exhibit N** **Revenues - Expenses - Income**
Submitted herewith.
- Exhibit O** **Depreciation and Depletion**
Submitted herewith.

- Exhibit P** **Tariff**
Omitted. ANR proposes to charge existing rates on these facilities and does not propose any change to its tariff.
- Exhibit T** **Related Applications**
The Beloit Laterals that are proposed for abandonment were certificated in FERC Docket Nos. G-669 and G-2327.¹⁶ ANR knows of no other filings pending before the Commission that relate to the instant filing.
- Exhibit U** **Contracts and Other Agreements**
Not applicable. The only facilities proposed for abandonment will be replaced by new facilities.
- Exhibit V** **Flow Diagram Showing Daily Design Capacity and Reflecting Operation of ANR's System After Abandonment**
Submitted herewith as Exhibit G.
- Exhibit W** **Impact on Customers**
Omitted. The proposed project will not result in the termination of service to any existing customer.
- Exhibit X** **Effect on Tariff**
Omitted. The proposed abandonment will have no effect on ANR's existing tariff.
- Exhibit Y** **Accounting Treatment of Abandonment**
Submitted herewith.
- Exhibit Z** **Location of Facilities**
Submitted herewith as Exhibit F.
- Exhibit Z-1** **Section 2-55(a) Facilities**
Submitted herewith.
- Exhibit Z-2** **Tariff Sheets**
Included for information purposes are Sections 28 and 29 of the General Terms and Conditions of ANR's FERC Gas Tariff, Second Revised Volume No. 1.

¹⁶ The Beloit 4-inch lateral was constructed under Docket No. G-669, 6 FPC 1 (1947). . The 6-inch Beloit Lateral was constructed under Docket No. G-2327, 15 FPC 23 (1936).

X.

MISCELLANEOUS

Included with this filing is a form of notice suitable for publication in the Federal Register as required by Section 157.7(b) of the Commission's Regulations, 18 C.F.R. 157.7(B). In accordance with Section 2011 of the Commission's Regulations, 18 C.F.R. § 385.2011, included with this filing is a computer diskette containing the filing in electronic form. The undersigned submits that the paper copies contain the same information as the electronic media, that the undersigned has read and knows the content of the paper copies, and that the contents as set forth herein are true to the best knowledge and belief of the undersigned.

XI.

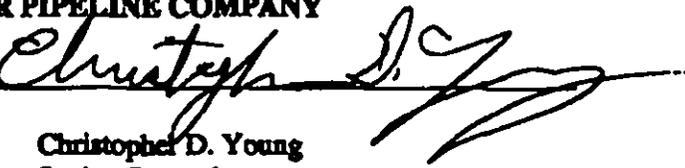
CONCLUSION

WHEREFORE, for the foregoing reasons, ANR respectfully requests that the Commission issue a certificate of public convenience and necessity, and any other authorizations the Commission deems necessary, so that ANR can construct and abandon the facilities described herein to accommodate the demand for new power generation facilities and for future load growth from the LDC sector and that will allow ANR to continue service to existing customers while terminating transportation agreements with Northern.

ANR requests the use of shortened procedures under the provisions of Rules 801 and 802 of the Commission's Rules of Practice and Procedure.

Respectfully submitted,

ANR PIPELINE COMPANY

By: 

Christopher D. Young
Senior Counsel
9 E Greenway Plaza
Houston, Texas 77046
(832) 676-5593
(832) 676-2251 Fax

Dated 9/6, 2002

Northern Natural Gas Company
COMPLAINT REQUESTING FAST-TRACK PROCESSING
FERC Docket No. RP04-____-000
Filed September 30, 2004

ATTACHMENT 3

**ANR Pipeline Company
WestLeg Project
Docket No. CP02-434-00**

Preliminary Determination on Non-Environmental Issues

December 26, 2002

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ANR Pipeline Company

101 FERC ¶ 61,376
Docket No. CP02-434-000

PRELIMINARY DETERMINATION ON NON-ENVIRONMENTAL ISSUES

(Issued December 26, 2002)

1. On September 6, 2002, ANR Pipeline Company (ANR) filed an application requesting abandonment approval and certificate authorization, pursuant to sections 7(b) and (c) of the Natural Gas Act (NGA), respectively, to enlarge the capacity of its existing natural gas system. Specifically, ANR seeks to loop its existing Madison Lateral line, located in Wisconsin's Walworth and Rock Counties and in Illinois' McHenry County, with approximately 26.3 miles of 30-inch diameter pipe, and to modify its existing Beloit Lateral line in Rock County, Wisconsin, by abandoning and removing 4- and 6-inch diameter lines and replacing them with a 20-inch diameter, 6.5-mile long line.

2. In this order, we reach a preliminary determination on the non-environmental issues raised by ANR's proposal and our findings support issuance of the requested authorizations. We find issuing this preliminary determination is in the public interest because it provides certainty concerning the economic aspect of ANR's proposal.

3. This order does not consider environmental issues. Our review, analysis, and conclusions regarding the environmental issues raised by ANR's proposal will be set forth in a subsequent order in this proceeding. Final approval and issuance of the requested authorizations depend on a favorable environmental assessment, and nothing in this order limits our actions with respect to the environmental assessment.

Background and Proposal

4. ANR maintains that abandoning and adding facilities as proposed will provide an alternative to bring needed gas to end users in the areas of Janesville and Madison, Wisconsin. ANR views its proposed WestLeg Project expansion as an economic means

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to enable ANR to access new sources of supply, react more quickly to customers' needs, and improve its system's reliability and flexibility.

New Service

5. The proposed WestLeg Project is intended to increase ANR's capacity to supply gas to the Madison and Janesville, Wisconsin, market areas by 220 MDth/d, with 86.5 MDth/d of this capacity to be used to replace volumes currently transported for ANR by Northern Natural Gas Company (Northern Natural). An open season was held in May 2001 and a reverse open season in August 2002,¹ resulting in a precedent agreement with Wisconsin Power and Light Company (Wisconsin Power and Light) for 60 MDth/d for a 9.5-year term. This service is to be provided under ANR's Rate Schedule FTS-3, which permits a shipper to take its full maximum daily quantity within a 16-hour window, rather than over the course of a standard 24-hour day. ANR explains that to be able to offer this service, it must have 90 MDth/d available, *i.e.*, 150 percent of 60 MDth/d is necessary in order to be able to move the full contracted-for 60 MDth/d within a 16-hour "day." Consequently, to accelerate delivery of 60 MDth per 16-hours, ANR has reserved 90 MDth per 24-hour day.² ANR states that Wisconsin Power and Light will use this capacity to supply gas to fuel a new 600-megawatt electric power plant being constructed by Calpine Corporation in Beloit, Wisconsin.³ ANR states that it is actively seeking customers for the remaining unsubscribed capacity of 43.5 MDth/d.

¹There were no offers to turn back capacity.

²In addition to Rate Schedule FTS-3 service, the precedent agreement also provides for ANR to provide *no-notice service for 7.5 MDth/d for a 10-year term*. ANR explains that because *no-notice service precludes shippers from exceeding any applicable maximum daily quantity at delivery points, no additional facilities are needed to provide this service*. See ANR's November 12, 2002 Data Response to Question No. 5.

³Construction of the Riverside Energy Center electric plant commenced in September 2002, with completion scheduled for September 2004.

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6. As part of its restructuring pursuant to Order No. 636,⁴ ANR was allowed to retain 86.5 MDth per day of capacity on Northern Natural's system in order to maintain service to customers on ANR's Madison Lateral. At the time of restructuring, ANR's mainline system upstream of the Madison Lateral was fully subscribed. As a result of capacity turnback, ANR expects to have a substantial amount of capacity available on its mainline upstream of the Madison Lateral. In anticipation of this capacity turnback, ANR believes that it is now more economical for it to increase the capacity of the Madison Lateral rather than to continue to take service from Northern Natural. Thus, ANR proposes to terminate two transportation agreements with Northern Natural, totaling 86.5 MDth/d.⁵ One contract is used to bring gas supplied by the Dakota Gasification Company from Ventura, Iowa, to Janesville, and one contract is used to provide transportation from Greensburg, Kansas, to Janesville. ANR states that once the proposed Madison Lateral loop is in service, it will no longer be necessary to ship 86.5 MDth/d over Northern Natural's pipeline, as it will be able to move equivalent gas volumes to Janesville using its mainline and new loop. ANR estimates the cost of the proposed WestLeg Project will be \$42,087,000.

New Facilities

7. The proposed expansion consists of the Madison Lateral loop, the Beloit Lateral replacement line, a new meter station, and modifications to two existing meter stations. The proposed 30-inch diameter, 26.3-mile long Madison Lateral loop will extend from an interconnect with ANR's mainline in McHenry County, Illinois, to a location just east of Janesville, Wisconsin. The current Beloit Lateral, located in Rock County, Wisconsin, is made up of four separate pipelines, with diameters of 4, 6, 8, and 12 inches. ANR proposes to abandon and remove the 4- and 6-inch diameter lines and replace them with

⁴Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 Fed. Reg. 13,267 (April 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (April 8, 1992), order on reh'g, Order No. 636-A, 57 Fed. Reg. 36,128 (August 12, 1992), III FERC Stats. & Regs. ¶ 30,950 (August 3, 1992), order on reh'g, Order No. 636-B, 57 Fed. Reg. 57,911 (December 8, 1992), 61 FERC ¶ 61,272 (1992), Notice of Denial of Rehearing (January 8, 1993), 62 FERC ¶ 61,007 (1993), aff'd in part and vacated and remanded in part, United Dist. Companies v. FERC, 88 F.3d 1105 (D.C. Cir. July 16, 1996), order on remand, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

⁵These two transportation agreements will be terminated in accordance with the provisions of the contracts.

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a single 20-inch diameter, 6.5-mile long line. Also, ANR proposes to install a new Tiffany East Meter Station adjacent to its existing Tiffany Meter Station, located on the southwest portion of the Beloit Lateral, to upgrade facilities at its existing Madison Meter Station, and to make minor modifications to measurement facilities at its North Madison Meter Station.

Proposed Rates and Rate Treatment

8. ANR proposes to charge its currently effective ML-7 maximum rates as recourse rates for service over its proposed facilities. ANR maintains that such an approach is appropriate, given that the proposed WestLeg Project facilities will function as an integrated portion of its mainline system, with expansion capacity sold, nominated, and scheduled in the same manner as capacity on its existing facilities. ANR estimates that the cost of service for the proposed facilities will be \$7.9 million for the first year of operation. ANR expects to receive \$3.8 million for service provided to Wisconsin Power and Light and realize cost savings of \$8.3 million as a result of terminating operational Account No. 858 transportation contracts with Northern Natural. The maximum recourse rate for delivery service in ANR's Mainline Northern Segment, *i.e.*, the proposed expansion's market area, is \$0.15 per Dth. ANR estimates that on a unit basis, the cost of service on the proposed WestLeg Project facilities yields a 100 percent load factor rate of approximately \$0.10 per Dth, without taking into consideration the cost savings from terminating the two Northern Natural transportation contracts. ANR states that under the Northern Natural contracts, it incurs approximately \$11.3 million per year in demand and commodity charges, resulting in a cost of service of approximately \$0.36 per Dth.

9. Currently, ANR recovers the Northern Natural contracts' costs through the Dakota Reservation Surcharge,⁶ applicable to service from Ventura, Iowa, to Janesville, Wisconsin, and through Operational Account No. 858 costs included in ANR's base tariff rates,⁷ applicable to service from Greensburg, Kansas, to Janesville, Wisconsin. Under ANR's tariff, base tariff reservation rates are discounted prior to the Dakota Surcharge, *i.e.*, ANR recovers the Dakota Surcharge prior to recovering its base rate.⁸ In contrast,

⁶See section 28.1(c) of the General Terms and Conditions (GT&C) of ANR's tariff.

⁷See ANR's tariff, GT&C, section 29(a)(1).

⁸See ANR's tariff, GT&C, section 28.6(a). Pursuant to section 28.1(c)(6), the
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Account No. 858 costs held for operational purposes are subject to the Commission's traditional discount policy.⁹

10. ANR states that once the proposed facilities are placed in service and the Northern Natural contracts are terminated, the Dakota Surcharge will be reduced as prescribed in its tariff's GT&C section 28.1(c), with the surcharge adjusted quarterly. The cost of the Northern Natural Greensburg-to-Janesville contract is included in ANR's base rates. Under ANR's Deferred Transportation Cost Adjustment, GT&C section 29, a filing to effect a Deferred Cost Adjustment is required only when the level of annual costs varies by more than 10 percent of the representative level of \$40.7 million. ANR estimates that termination of the Operational Account No. 858 contract will produce an annual savings of \$8.3 million, about twice the threshold needed to trigger a Deferred Transportation Cost Adjustment filing; this will cause ANR to make a negative adjustment, the result of which will be a reduction in ANR's rates.¹⁰

11. ANR contends that while rolled-in rate treatment of its proposed WestLeg Project will bring a financial benefit to existing shippers, even before that occurs, ANR and certain of its shippers should realize cost savings from the termination of the Northern Natural contracts. Pursuant to the mechanism set forth in section 29 of its existing tariff, ANR proposes to recognize these savings by crediting the full value of the Account No.

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surcharge is adjusted quarterly. ANR explains that because the Dakota contract is directly recognized in the mechanism as an actual Dakota cost, the Dakota surcharge will be reduced starting in the first filing for the first quarter after termination. See also, *Natural Gas Pipeline Company of America*, 69 FERC ¶ 61,029 (1994), *order on reh'g*, 70 FERC ¶ 61,317 (1995), describing discounting and the recovery of transition costs with respect to Order No. 636 restructuring.

⁹ANR's tariff, GT&C, section 29, describes the tracking mechanism associated with Account No. 858 costs and reflects the inclusion of these costs in ANR's base rates. Operational Account No. 858 costs are not considered gas supply realignment costs; consequently these costs, unlike Dakota costs, are not subject to any Order No. 636 transition cost recovery mechanism.

¹⁰ANR acknowledges this end result remains uncertain, since it cannot now identify what the level of annual costs will be at the time of termination. In the event there is an adjustment, it would reduce the transportation costs of shippers currently paying maximum recourse rates and surcharges. Shippers already paying a discounted or negotiated rate that falls below the adjusted, reduced rate would be unaffected.

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858 costs associated with termination of the Northern Natural Greensburg-to-Janesville contract, estimated at \$8.3 million, to the proposed expansion's cost of service. As noted, once the expansion facilities are placed in operation, Northern Natural's service will no longer be needed, as ANR will be able to move equivalent volumes via its own system, and so gain control over the operational flow of these volumes.

12. ANR asks that the Commission clarify that only those shippers now paying Account No. 858 costs will be eligible to receive an adjusted monthly bill as a consequence of the Deferred Transportation Cost Adjustment provision. ANR maintains that it would be inappropriate if shippers now paying a reduced rate were able to obtain an additional reduction by operation of section 29 of its tariff.

Notice and Interventions

13. Notice of ANR's application was published in the Federal Register on September 13, 2002.¹¹ Timely motions to intervene were filed by 16 parties.¹²

14. Late motions to intervene were filed by Aquila, Inc. d/b/a/ Aquila Networks, MidAmerica Energy Company, and Guardian Pipeline, L.L.C. We find that granting the late filed motions will not delay, disrupt, place an additional burden on existing parties, or otherwise prejudice these proceedings. Therefore, for good cause shown, the late-filed motions to intervene are granted, in accordance with Rule 214 of our Rules of Practice and Procedure.

Comments

Wisconsin Distributor Group

15. The Wisconsin Distributor Group (WDG) supports ANR's application and provides a clarification regarding which shippers are eligible to benefit from the anticipated reduction in ANR's Account No. 858 costs.¹³ Specifically, WDG states that

¹¹67 FR 59,277.

¹²Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214 (2002). Intervenor are listed in the appendix to this order.

¹³The members of the WDG for purposes of this proceeding are Alliant Energy -
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ANR has authorized it to explain that the negotiated rate provisions of a shipper's contract with ANR will dictate whether the shipper benefits from ANR's predicted negative rate adjustment due to reduced Account No. 858 costs. In other words, WDG states that a shipper receiving a negotiated rate is not foreclosed, depending upon the terms of its contract, from benefitting from ANR's reduction in the Account No. 858 costs. WDG states that the clarification is necessary because ANR states in its application that "shippers paying rates discounted below the level necessary to recover these [Account No. 858] costs or paying negotiated rates will not see any further reduction in their monthly bills." WDG states that simply because a shipper is paying a negotiated rate, it should not be precluded from benefitting from ANR's negative rate adjustment.

Protests

Northern Natural

16. Northern Natural objects to the proposed expansion, arguing that it will not provide the operational and financial benefits that ANR purports, but instead will result in the unmerited construction of redundant facilities and may lead to stranded costs, rate increases, subsidies, and capacity turnback. Northern Natural concedes that terminating its two contracts could, as ANR claims, result in a reduction of transportation costs of approximately \$11 million each year—\$3 million attributable to the Dakota Surcharge, \$8 million attributable to ANR's base tariff rates. However, in light of ANR's statement that these savings depend on Account No. 858 costs being greater than 10 percent of the representative level of \$40.7 million, Northern Natural questions whether these cost savings will be realized in fact, and will in fact flow through to ANR's shippers. Saving of any lesser amount will be retained by ANR, in which case Northern Natural suspects that rather than discounting its rates to reflect contract termination savings, ANR will retain these savings. Northern Natural also points out that if the contract for Dakota gas supplies is canceled, ANR will no longer receive the Dakota contract volumes at Janesville, Wisconsin, but will take delivery upstream at Ventura, Iowa. Northern Natural urges the Commission to assess the economic impact this may have, since it expects ANR will be forced to sell gas for a lower price at Ventura than it could obtain at Janesville. In view of the above, Northern Natural concludes that ANR's existing

¹³(...continued)

Wisconsin Power & Light Company, City Gas Company, Madison Gas & Electric Company, Wisconsin Gas Company and Wisconsin Electric Power Company, and Wisconsin Public Service Corporation.

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shippers could be required to subsidize the proposed expansion's costs,¹⁴ an outcome inconsistent with the Commission's Statement of Policy on the Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement on New Facilities).¹⁵

17. Northern Natural notes that ANR intends to provide Wisconsin Power and Light with \$5.5 million as a contribution in aid of construction for approximately 6 miles of 20-inch diameter pipe to be built from ANR's pipeline to the Riverside Energy Center power plant.¹⁶ Northern Natural asks whether this amount has been included in the projected costs of the proposed WestLeg Project. Northern Natural requests that ANR clarify the proposed project's costs by revising Exhibit K of its application to separately designate costs for facilities to be built to serve existing markets and costs for facilities to be built to serve new markets.

18. Upon placing its proposed expansion in service, ANR plans to turn back 86.5 MDth/d to Northern Natural. Northern Natural insists that this would result in an increase in costs on its own system, and constitute an adverse impact on an existing pipeline, an impact the Policy Statement on New Facilities seeks to avoid. Northern Natural states that it is prepared to continue to provide service to ANR for 86.5 MDth/d and "is extremely interested in discussing various transportation service proposals with ANR" in order to offer ANR an economic alternative to the expansion. Northern Natural insists that there is no need for ANR to duplicate the 86.5 MDth/d capacity currently supplied by Northern Natural.

19. ANR, in support of its contention that the addition of the proposed WestLeg facilities will enhance its system's reliability and flexibility, complains of the long lag time it can incur when nominating capacity on Northern Natural. Northern Natural

¹⁴Specifically, Northern Natural calculates that without ANR's claimed \$8.358 million credit, the total incremental cost of the proposed WestLeg Project will be \$7.924 million, with WestLeg costs exceeding revenues by \$2.917 million.

¹⁵88 FERC ¶ 61,227 (1999), orders clarifying statement of policy, 90 FERC ¶ 61,128 and 92 FERC ¶ 61,094 (2000), order further clarifying statement of policy, 92 FERC ¶ 61,094 (2000).

¹⁶Wisconsin Power and Light intends to construct this distribution line from the proposed Tiffany East meter station to the Riverside Energy Center. ANR states that Wisconsin Power and Light and Calpine Corporation have received approval for this distribution line and for the Riverside Energy Center power plant from the Public Service Commission of Wisconsin in Docket No. 6680-CG-146.

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disputes this, insisting that under its tariff, in accordance with the North American Energy Standards Board (NAESB) nomination timeline, changes can be made in nominating capacity throughout the gas day. Northern Natural insists that it communicates frequently with ANR in order to resolve reliability issues on a real time basis.

20. Northern Natural challenges ANR's showing of market support for its proposed expansion project. Northern Natural observes that the single precedent agreement for 60 MDth/d is subject to several conditions, notably ANR's current shippers turning back 60 MDth/d. Northern Natural points out that one or more of the several conditions may not be met. Northern Natural maintains that if the 86.5 MDth/d it is providing is omitted, and ANR is unable to meet the conditions of its sole precedent agreement, and customers for the unsubscribed 43.5 MDth/d of capacity do not materialize, then there is no justification for the proposed expansion.

McHenry County Conservation District

21. The McHenry County Conservation District opposes the proposed expansion. The Conservation District states that its objections are based upon problems experienced with the recent construction of Guardian Pipeline Company's (Guardian) new interstate pipeline in McHenry County, Illinois. The McHenry County Conservation District argues that Guardian was insufficiently attentive to environmental impacts and insensitive to landowners' concerns and anticipates that ANR will act in a similar manner. If the Commission elects to authorize the proposed expansion, the McHenry County Conservation District requests that the Commission impose conditions mandating environmental protections.

ANR's Response

22. Although the Commission's Rules of Practice and Procedure do not permit answers to protests,¹⁷ we find good cause to admit ANR's response since it will not delay the proceeding and will insure a complete and accurate record in this proceeding.

23. ANR contends that its proposal is consistent with the Commission's admonition in its Policy Statement on New Facilities that existing customers should not make financial contributions to subsidize expansion projects. ANR observes that the Policy Statement contains no requirement that expansion projects make financial contributions to existing

¹⁷18 CFR § 385.213(a)(2) (2002).

shippers. Accordingly, ANR contends that Northern Natural's concerns regarding the extent to which the proposed expansion will reduce ANR's expenses, and whether existing customers will realize rate benefits from these reduced expenses, are immaterial to assessing the merits of its proposal. ANR reiterates its request for rolled-in rate treatment for its proposed WestLeg Project, claiming that this will result in an overall reduction in existing customers' rates.

24. Northern Natural contends that ANR has no cause to complain concerning the operational aspects of the transportation service it receives from Northern Natural. ANR does not fault Northern Natural's performance, but insists that the proposed expansion will provide ANR with lower cost service and greater reliability and flexibility. As an example, ANR expects its capability to control linepack on its system will enable it to better serve its customers' transient needs. Having considered the option of continuing to ship gas via Northern Natural under renegotiated terms of service, ANR concludes the costs and control conferred by its proposed expansion offer a more favorable alternative.

25. ANR dismisses as speculative Northern Natural's contention that market and precedent agreement conditions will not support the proposed additional capacity. In particular, Northern Natural questioned whether ANR would be able to secure sufficient turnback capacity. ANR points out that the Commission has approved the restructuring of its Wisconsin Electric Power Company and Wisconsin Gas Company contracts,¹⁸ thus making available 60 MDth/d of turnback capacity for Wisconsin Power and Light that will serve as the basis for the precedent agreement. With respect to remaining unsubscribed capacity, ANR avers that it is actively seeking, and expects to find, customers. ANR adds that even with Wisconsin Power and Light as its sole shipper, reflecting a reserved capacity of 90 MDth/d, the proposal merits approval.¹⁹

26. ANR concedes that under its proposal, existing customers already receiving service at a discount may not realize a benefit in the form of a yet steeper discount as a result of the proposed expansion. ANR stresses, first, that no party questions the

¹⁸Commission approval appears in a September 5, 2002 Letter Order in Docket No. RP99-301-054.

¹⁹We note that although ANR's initial application reflected revenues it anticipated receiving from marketing unsubscribed expansion capacity, given that negotiations with potential expansion shippers have yet to be completed, ANR has revised its calculations to remove revenues attributable to unsubscribed expansion service. See ANR's November 12, 2002 Data Response to Question No. 3 and revised Exhibit N.

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mechanism by which it will apply discounts, and second, that existing customers now paying maximum rates should realize a rate reduction.

27. ANR challenges Northern Natural's contention that the value of Dakota gas will be diminished if sold at Ventura, Iowa, instead of Janesville, Wisconsin, arguing that there is an established market at Ventura, and that the Janesville delivery point is small and lacks liquidity. With respect to the termination of the Dakota gas contract, ANR states it will reduce the associated surcharge by \$3 million a year.

Discussion

28. ANR proposes to construct and operate facilities to be used to transport gas in interstate commerce and to abandon existing interstate gas facilities. Therefore, ANR's proposal is subject to the Commission's jurisdiction and the requirements of subsections (b), (c) and (e) of section 7 of the NGA.

Public Convenience and Necessity

29. In order to determine whether a proposed pipeline project is required by the public convenience and necessity, we first consider whether the proposal meets the criteria set forth in our 1999 Policy Statement on New Facilities.²⁰ In this policy statement, we explain that in deciding whether to authorize the construction of major new pipeline facilities, we balance public benefits against potential adverse impacts. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions to the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

30. Under this policy, the threshold requirement for a pipeline proposing a new project is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, on other pipelines in the market and those existing pipelines' captive customers, and on landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by

²⁰See note 15.

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balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse impacts on economic interests will we then proceed to complete the environmental analysis where other interests are considered.

31. We find that ANR's proposed WestLeg Project will satisfy the threshold requirement that an expansion project not require subsidization by a pipeline's existing customers. We concur with ANR's cost and revenue study's demonstration that the estimated savings from terminating two transportation contracts with Northern Natural and annual revenues derived from the proposed facilities will exceed the expansion costs, both during each year of the 9.5-year term of the Wisconsin Power and Light service agreement, and on a cumulative basis.²¹ Thus, we find existing customers will not be placed in the position of subsidizing the WestLeg Project.

32. We find that in addition to enabling ANR to meet increased market demand, the proposed project will also provide system benefits by enabling shippers to access additional sources of supply. Further, ANR expects the expansion to aid in relieving an existing bottleneck that restricts the flow of gas between its Wisconsin mainline and the Madison and Janesville market areas. Also, the Madison Lateral loop line will provide ANR with linepack now unavailable, which will enable ANR to adjust with alacrity to the hourly transient flow associated with winter heating and power generation loads. In view of the above, we expect the new facilities, in particular the new loop line, will enhance system reliability, flexibility, and efficiency.

33. We find that the proposed project should have minimal adverse impacts. Since the proposal will result in a net revenue benefit, ANR's existing customers will not be adversely impacted. Further, we find the proposed expansion will enhance, not degrade, service to existing customers. With the exception of Northern Natural, the proposal will not impact other pipelines or their captive customers. The WestLeg facilities should have minimal impact on landowners, because the right-of-way required is either within or adjacent to ANR's established transportation corridor.

34. The WestLeg Project will both provide new capacity to new customers and enhance service to ANR's existing shippers. ANR has presented a precedent agreement for firm service for most of the capacity to be created, and based on the rates represented in the precedent agreement, and the savings to be realized by terminating contracts with Northern Natural, expansion revenues will exceed expansion costs. We conclude that the

²¹See ANR's November 12, 2002 Data Response to Question No. 11.

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benefits of the proposed WestLeg project outweigh any potential adverse effects. Therefore, we reach a preliminary determination that ANR's proposed expansion is required by the public convenience and necessity.

Rates

35. The maximum recourse rate for delivery service in ANR's proposed expansion market area is \$0.15 per Dth. ANR estimates that on a unit basis, the cost of service on WestLeg Project facilities yields a 100 percent load factor rate of approximately \$0.10 per Dth. This is without accounting for the cost savings from terminating the two Northern Natural contracts, under which ANR incurs approximately \$11.3 million per year in demand and commodity charges, for a cost of service of approximately \$0.36 per Dth. We accept ANR's assertion that the proposed West Leg project offers a lower cost transportation alternative.

36. Using its existing approved cost factors — a 1.30 percent depreciation rate and an overall rate of return of 11.13 percent, based on a 40/60 debt to equity capital structure, with equity at 12.25 percent and long term debt at 9.44 percent — ANR concludes that the proposed expansion's revenues will exceed the project's costs. We concur with this conclusion. We next consider whether WestLeg Project costs should be rolled into the rates of ANR's existing customers. We find they should, because existing customers are expected to benefit as a result, and because this project's comparatively inexpensive expansibility is made possible because of earlier, more costly construction, for which existing shippers have shouldered the cost.²² Because rolling the cost of the proposed facilities into ANR's existing rate base in a future NGA section 4 rate proceeding would have the effect of reducing current rates, existing shippers will not subsidize the expansion.²³ In fact, we expect ANR's existing customers to realize benefits prior to ANR's next section 4 rate proceeding by means of cost savings from the reduction in the Dakota surcharges and the reduction in base rates from the Operational Account No. 858 Contract costs. Accordingly, barring changed circumstances, we find no cause to object to a request by ANR in a future section 4 rate proceeding to roll WestLeg costs into its existing rate base.

²²See 88 FERC ¶ 61,227, at 61,746.

²³We note that a reduction in transportation charges may only apply to those shippers that are currently subject to ANR maximum rate, whereas shippers now paying reduced or negotiated rates may not realize any change in charges.

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37. We note that ANR and Wisconsin Power and Light have agreed to negotiated rates and terms of service that contain material deviations from ANR's standard tariff provisions. We accept ANR's explanation that negotiated terms are needed in order to enable it to meet operational pressure and flow commitments, and note ANR stated its willingness to enter into similar commitments with other similarly situated shippers.²⁴ We find that the negotiated provisions are neither unduly discriminatory nor will they adversely impact the quality of service received by any shipper. ANR will be required to file its Wisconsin Power and Light contract at least 30 days prior to the effective service date, pursuant to ANR's tariff's negotiated rate authority, GT&C, section 30.

Commission Response to Protests

McHenry County Conservation District

38. The McHenry County Conservation District's opposition is based on concerns related to environmental impacts associated with the proposed WestLeg Project. As noted, this preliminary determination does not include consideration of the environmental aspects of ANR's application. Therefore, we defer consideration of the issues raised, since these issues will be analyzed and addressed in the context of our environmental assessment, and nothing in this order restricts the scope or outcome of that environmental review. In response to the McHenry County Conservation District's claim that it has encountered instances of questionable conduct by an interstate pipeline in another proceeding, we invite the McHenry County Conservation District, in the context of our ongoing environmental assessment in this proceeding, to suggest particular conditions on ANR's construction or operations that could assist in preventing future instances of inappropriate conduct.

Northern Natural

39. Northern Natural complains that it will be adversely impacted by the termination of the two ANR service contracts. We note that ANR's termination will take place under the terms of the contracts, *i.e.*, ANR is not breaching the contracts by electing to arrange for an alternative means to obtain equivalent service. We also note that Northern Natural's claims of harm are speculative. It may be the case that Northern Natural will prove able to market the capacity now dedicated to ANR, and thereby recoup revenues now derived from service for ANR and enhance other shippers' transportation options. Finally, we are not persuaded that gas delivered at Ventura, Iowa, will inevitably bring a

²⁴See ANR's November 12, 2002 Data Response to Question No. 6(a).

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lower price than gas sold at Janesville, Wisconsin, since, as ANR points out, there is arguably a more robust market at Ventura. The forgoing aside, even if we were to accept Northern Natural's description of the adverse impact of ANR's proposal, we would still find the expansion to be consistent with our Policy Statement on New Facilities, since on balance, we believe the proposal presents a net benefit.

40. Northern Natural questions the utility of ANR's proposal, emphasizing that it has demonstrated its ability to provide satisfactory service and that it is sufficiently flexible with respect to future service. We are reluctant to assess the practicality of ANR's continuing to rely on Northern Natural, and find no cause to consider the character of the companies' past interactions. ANR has made a determination that its proposed expansion will best serve its needs, and provided we find its proposal is required by the public convenience and necessity, there is no need to analyze ANR's motives or review the merits of Northern Natural's past or proposed service.

41. Northern Natural complains that ANR did not include in the cost of its expansion the \$5.5 million that it contributed to Wisconsin Power and Light to build a distribution line to bring gas from ANR's lateral to the Riverside Energy Center power plant. We find no fault with ANR's decision to omit the \$5.5 million contribution. The distribution line is not subject to the Commission's jurisdiction, and ANR's customers neither pay costs of nor receive benefits from this nonjurisdictional line.²⁵ Accordingly, we conclude ANR acted properly by excluding costs associated with this line from its rate base.

42. We do not share Northern Natural's apprehension that the turnback capacity that the proposed expansion relies upon will not materialize. We have approved the restructuring of Wisconsin Electric Power Company and Wisconsin Gas Company contracts that are the basis for the 60 MDth/d of turnback capacity,²⁶ and note that any final approval of the proposed WestLeg Project will be conditioned on ANR's securing the capacity necessary to meet the service obligations represented in its application.

43. Northern Natural contends that although ANR will surely realize a financial benefit from its proposed expansion, it is unclear whether existing customers will share in such benefits in the form of reduced rates. The method by which ANR's cost savings will be passed through to its existing customers is governed by ANR's existing contract

²⁵We note that if the \$5.5 million for the distribution line were included in the expansion's cost – which it is not – the proposed expansion would still result in a net financial gain.

²⁶See ANR, Docket No. RP99-301-054, Letter Order issued September 5, 2002.

and tariff provisions. Currently, ANR recovers costs associated with its Northern Natural contracts primarily through the Dakota Surcharge, described in Northern Natural's tariff, GT&C, section 28.1(c), and as Operational Account No. 858 costs. Under ANR's Order of Discounting, GT&C section 28.6(a) provides that ANR's base tariff rates are discounted prior to the Dakota Surcharge for attribution of recovery of transition costs. Therefore, ANR recovers the Dakota Surcharges prior to recovering its base rate.²⁷ The Operational Account contract being held for operational purposes is subject to the Commission's discount policy.²⁸

44. ANR is required to make a Deferred Transportation Cost Adjustment filing when cost savings from the elimination of Account No. 858 costs are greater than 10 percent of the representative level of \$40.7 million. Under the terms of its tariff, GT&C section 29, if savings do not reach this 10 percent threshold, ANR need not make a Deferred Transportation Cost Adjustment filing and may retain these lesser savings. Northern Natural objects to ANR's proposal to follow its existing tariff provisions, maintaining that unless all savings realized from the Account No. 858 costs are passed through to shippers in a Deferred Transportation Cost Adjustment filing, including those that fall below the 10 percent threshold, then expansion shippers will effectively be subsidizing expansion costs. We observe that the anticipated reduction of approximately \$8.3 million attributable to ANR's termination of two Northern Natural operational contracts represents approximately 20 percent of ANR's present \$39 million in operational Account No. 858 Transportation contracts.²⁹ Thus, it is reasonable to anticipate that the 10 percent trigger will be exceeded, that ANR will make a Deferred Transportation Cost Adjustment filing, and that those customers paying Account No. 858 costs will receive a discount in their rates to reflect the cost savings.³⁰

45. ANR points out that given the order in which it implements discounts and the mechanism of the Deferred Transportation Cost Adjustment, customers that now receive

²⁷See note 8.

²⁸See *Algonquin Gas Transmission Company*, 69 FERC ¶ 61,105 (1994).

²⁹As of July 1, 2002, the previous twelve months costs of ANR's operational Account 858 Transportation contracts were approximately \$39 million.

³⁰The Commission has previously approved the retention of savings from terminating Account No. 858 contracts as justification for granting a certificate of public convenience and necessity authorization and for rolling-in the costs into rate base. *Dominion Transmission, Inc.*, 93 FERC ¶61,095 (2000).

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a discount may not receive an even larger discount when ANR makes its Deferred Transportation Cost Adjustment filing. We find that this is in accord with ANR's approved procedures. Under ANR's tariff, base tariff reservation rates are discounted prior to the Dakota Surcharge, *i.e.*, ANR recovers the Dakota Surcharge prior to recovering its base rate. We agree with ANR that only those shippers paying the costs of the Operational Account No. 858 contract should stand to benefit from its elimination. Thus, we disagree with Northern Natural's premise that ANR's existing shippers must realize a rate reduction in order to meet the no-subsidization criteria of our Policy Statement on New Facilities. We accept ANR's proposal to preclude customers that presently pay a discounted rate that is below the level necessary to recover these costs from realizing any additional discount.³¹ We note that any cost savings retained by ANR and not flowed through to its customers will have to be accounted for in ANR's next Deferred Transportation Cost Adjustment filing pursuant to Section 29.3 of its GT&C. Significantly, regardless of the assumed discounting scenario, the proposed expansion will not add to existing shippers' costs. Thus, even if ANR makes no Deferred Transportation Cost Adjustment filing, and even if existing shippers receive no rate discount, the expansion will still stand on its own without any financial contribution from the existing shippers, consistent with our Policy Statement on New Facilities.

Engineering

46. We believe the proposed project to construct and abandon natural gas facilities is properly designed to increase the capacity of ANR's Madison Lateral by 220 MDth/d. The proposed project will allow ANR to: (1) terminate contracts with Northern Natural under which up to 86.5 MDth/d is delivered into ANR's Madison Lateral at Janesville, Wisconsin, and replace the Northern Natural volumes with gas received from its own mainline, and (2) provide an additional 133.5 MDth/d of firm transportation capacity on ANR's Madison Lateral. Additionally, we believe that the proposed facilities will not have an adverse impact on ANR's ability to meet contractual obligations to its existing shippers. Our engineering review indicates that the project has the potential to enhance ANR's system's overall reliability and flexibility.

Environmental

³¹We note, in accordance with WDG's ANR-authorized clarification, that customers receiving service under discounted or negotiated terms may have their current rate reduced, but whether this occurs is a function of the magnitude of cost savings realized with respect to the extent of the discount in effect.

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47. On September 30, 2002, the Commission issued a Notice of Intent to Prepare an environmental assessment for the proposed WestLeg Project and Request for Comments on Environmental Issues. The Commission will address all environmental issues raised by ANR's proposed project in its final order in this proceeding, which will be issued after the environmental assessment is completed and comments in response to the environmental assessment are received. The issuance of this preliminary determination on non-environmental issues is not intended to prejudice or otherwise effect the Commission's consideration of environmental issues.

48. ANR maintains that for the most part, the proposed construction and abandonment activity will occur within existing rights-of-way,³² with the remaining portion impacting previously disturbed areas and open agricultural land. The proposed loop of the existing Madison Lateral will require ANR to increase its permanent right-of-way by an additional 12 acres; no such right-of-way is needed for the remaining expansion project facilities.

Conclusion

49. For the reasons discussed above, the Commission makes a preliminary determination, subject to completion of the environmental review, that ANR's proposed WestLeg Project is required by the public convenience and necessity and that the benefits of the proposed project outweigh any potential or residual adverse effects, consistent with the Commission's Policy Statement on New Facilities. Further, any final order issued in this proceeding will be conditioned upon compliance with requirements discussed in this order, any final order, and specified in the ordering paragraphs.

The Commission orders:

(A) A preliminary determination is made that ANR's application under section 7(c) of the NGA to construct, own, operate and maintain natural gas facilities, as described and conditioned herein, and as more fully described in the application, would, on the basis of all pertinent non-environmental issues, be required by the public convenience and necessity.

³²ANR states that it has acquired 100 percent of the right-of-way required for the proposed modifications to its Beloit Lateral and Tiffany East Meter Station, 97.5 percent of the permanent easements needed for the Wisconsin portion of the Madison Lateral loop, and 88 percent of the right-of-way for the Illinois portion of the Madison Lateral loop.

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(B) A preliminary determination is made, pursuant to NGA Section 7(b), to grant ANR permission and approval to abandon and remove the 4- and 6-inch diameter lines of ANR's Beloit Lateral, as more fully described herein and in the application.

(C) Any certificate, authority, or approval issued in a final order in this proceeding will be conditioned, as discussed in this order, on the following:

(1) ANR's constructing and making available for service the facilities described herein within one year of a final order in this proceeding, pursuant to paragraph (b) of section 157.20 of the Commission's regulations;

(2) ANR's compliance with all regulations under the NGA including, but not limited to, Parts 154 and 284, and paragraphs(a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(3) ANR's notifying the Commission within 10 days of the date of the abandonment of facilities;

(4) ANR's executing a contract for the level of service and the terms of service represented in the precedent agreement prior to commencing construction, and;

(5) ANR's filing its service agreement with Wisconsin Power and Light as a negotiated rate agreement within 30 days of the date of a final order in this proceeding.

(D) The preliminary determination made in Ordering Paragraphs (A) and (B) above contemplates issuance, after completion of a pending review of all environmental matters raised by the application, of a final order of the Commission determining that the proposed expansion is required by the public convenience and necessity, in accordance with the National Environmental Policy Act and section 7(c) of the NGA.

(E) Northern Natural's protest is denied and consideration of the McHenry County Conservation District's protest is deferred, for the reasons discussed in the body of this order.

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(F) The Aquila Inc. d/b/a Aquila Networks, MidAmerica Energy Company, and Guardian Pipeline, L.L.C. motions to intervene out-of-time are granted.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.

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Appendix

Interventions

Aquila Inc. d/b/a Aquila Networks*
Calpine Energy Services, L.P.
City Gas Company
East Ohio Gas Company d/b/a Dominion East Ohio
Guardian Pipeline, L.L.C.*
Madison Gas & Electric Company
McHenry County Conservation District**
Michigan Consolidated Gas Company
Mid-America Energy Company*
Northern Natural Gas Company**
Peoples Gas Light and Coke Company and North Shore Gas Company
Process Gas Consumers Group
ProLiance Energy, LLC
Public Service Commission of Wisconsin
USGen New England, Inc., jointly with Badger Generating Company, LLC, Covert
Generating Company, LLC, PG&E Energy Trading-Gas Corporation, and PG&E
Dispersed Generating Company
Wisconsin Distributor Group
Wisconsin Electric Power Company and Wisconsin Gas Company
Wisconsin Power & Light Company
Wisconsin Public Service Corporation

* Motion to intervene filed out-of-time.

** Motion to intervene included a protest.

Northern Natural Gas Company
COMPLAINT REQUESTING FAST-TRACK PROCESSING
FERC Docket No. RP04-___-000
Filed September 30, 2004

Appendix I

Protective Order

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

No them Natural Gas Company

Docket No. RP04-__-000

v.

ANR Pipeline Company

PROTECTIVE ORDER

(Issued)

1. This Protective Order shall govern the use of all Protected Materials produced by, or on behalf of, any Participant. Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Presiding Administrative Law Judge ("Presiding Judge") or the Federal Energy Regulatory Commission ("Commission").
2. This Protective Order applies to those materials which contain critical energy infrastructure information, as defined in 18 CFR ' 388.113(c)(1) ("Critical Energy Infrastructure Information").
3. Definitions -- For purposes of this Order:
 - (a) The term "Participant" shall mean a Participant as defined in 18 CFR ' 385.102(b).
 - (b) (1) The term "Protected Materials" means (A) materials (including depositions) provided by a Participant in response to discovery requests and designated by such Participant as protected; (B) any information contained in or obtained from such designated materials; (C) any other materials which are made subject to this Protective Order by the Presiding Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the Participants; (D) notes of Protected Materials; and (E) copies of Protected Materials. The Participant producing the Protected Materials shall physically mark them on each page as "Contains Critical Energy Infrastructure Information -- Do Not Release."
 - (2) The term "Notes of Protected Materials" means memoranda, handwritten notes, or any other form of information (including electronic form)

which copies or discloses materials described in Paragraph 5. Notes of Protected Materials are subject to the same restrictions provided in this order for Protected Materials except as specifically provided in this order.

(3) Protected Materials shall not include (A) any information or document contained in the files of the Commission, or any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order, or (C) any information or document labeled as "Non-Internet Public" by a Participant, in accordance with Paragraph 30 of FERC Order No. 630, FERC Stat. & Reg. & 31,140. Protected Materials do include any information or document contained in the files of the Commission that has been designated as Critical Energy Infrastructure Information.

(c) The term "Non-Disclosure Certificate" shall mean the certificate annexed hereto by which Participants who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that such Participants have read the Protective Order and agree to be bound by it. All Non-Disclosure Certificates shall be served on all parties on the official service list maintained by the Secretary in this proceeding.

(d) The term "Reviewing Representative" shall mean a person who has signed a Non-Disclosure Certificate and who is:

- (1) Commission Litigation Staff;
- (2) an attorney who has made an appearance in this proceeding for a Participant;
- (3) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Paragraph (2);
- (4) an expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding;
- (5) a person designated as a Reviewing Representative by order of the Presiding Judge or the Commission; or
- (6) employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.

4. Protected Materials shall be made available under the terms of this Protective Order only to Participants and only through their Reviewing Representatives as provided in Paragraphs 7-9.
5. Protected Materials shall remain available to Participants until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Participants shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Participant that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Material may be retained, if they are maintained in accordance with Paragraph 6, below. Within such time period each Participant, if requested to do so, shall also submit to the producing Participant an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.
6. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8-9. The Secretary shall place any Protected Materials filed with the Commission in a non-public file. By placing such documents in a non-public file, the Commission is not making a determination of any claim of privilege. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities. For documents submitted to Commission Litigation Staff ("Staff"), Staff shall follow the notification procedures of 18 CFR ' 388.112 before making public any Protected Materials.
7. Protected Materials shall be treated as confidential by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be

treated as Notes of Protected Materials if they disclose the contents of Protected Materials.

8. (a) If a Reviewing Representative's scope of employment includes the marketing of energy, the direct supervision of any employee or employees whose duties include the marketing of energy, the provision of consulting services to any person whose duties include the marketing of energy, or the direct supervision of any employee or employees whose duties include the marketing of energy, such Reviewing Representative may not use information contained in any Protected Materials obtained through this proceeding to give any Participant or any competitor of any Participant a commercial advantage.

(b) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3 (d) above, the Participant shall seek agreement from the Participant providing the Protected Materials. If an agreement is reached that person shall be a Reviewing Representative pursuant to Paragraphs 3(d) above with respect to those materials. If no agreement is reached, the Participant shall submit the disputed designation to the Presiding Judge for resolution.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Participant asserting confidentiality prior to disclosure of any Protected Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this order.

10. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(d), access to Protected Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate

shall continue to be bound by the provisions of this Protective Order and the certification.

11. Protected materials designated by a Participant as Critical Energy Infrastructure Information shall remain protected and subject to the provisions of this Protective Order, unless a Participant requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.

12. All copies of all documents reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed under seal and served under seal upon the Presiding Judge and all Reviewing Representatives who are on the service list. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information B Do Not Release". For anything filed under seal, redacted versions or, where an entire document is protected, a letter indicating such, will also be filed with the Commission and served on all parties on the service list and the Presiding Judge. Counsel for the producing Participant shall provide to all Participants who request the same, a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

If any Participant desires to include, utilize or refer to any Protected Materials or information derived therefrom in testimony or exhibits during the hearing in these proceedings in such a manner that might require disclosure of such material to persons other than reviewing representatives, such participant shall first notify both counsel for the disclosing participant and the Presiding Judge of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Material will be governed by procedures determined by the Presiding Judge.

13. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the use of Protected Materials on any legal grounds.

14. Nothing in this Protective Order shall preclude any Participant from requesting the Presiding Judge, the Commission, or any other body having appropriate authority, to find that this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this

Protective Order. The Presiding Judge may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

15. Each party governed by this Protective Order has the right to seek changes in it as appropriate from the Presiding Judge or the Commission.

16. All Protected Materials filed with the Commission, the Presiding Judge, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials subject to this Protective Order. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information – Do Not Release."

17. If the Presiding Judge finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for three (3) business days from the date of issuance of the Presiding Judge's decision, and if the Participant seeking protection files an interlocutory appeal or requests that the issue be certified to the Commission, for an additional seven (7) business days. None of the Participants waives its rights to seek additional administrative or judicial remedies after the Presiding Judge's decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. The provisions of 18 CFR ' ' 388.112 and 388.113 shall apply to any requests for Protected Materials in the files of the Commission under the Freedom of Information Act. (5 U.S.C. ' 552).

18. Nothing in this Protective Order shall be deemed to preclude any Participant from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Protective Order.

19. None of the Participants waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

20. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this (these) proceeding(s). Any violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Northern Natural Gas Company

Docket No. RP04-__-000

v.

ANR Pipeline Company

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____

Title: _____

Representing: _____

Date: _____

