107 FERC ¶ 61,241
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 2, 2004

In Reply Refer To:
ANR Pipeline Company
Docket No. RP99-301-113

ANR Pipeline Company
Nine Greenway Plaza
Houston, Texas 77046

Attention: Dawn A. McGuire, Attorney

Reference: Negotiated Rate Agreement and Related Contract Nos. 110434, 110435, 110436, 110437, 110438, 110439, and 110440

Ladies and Gentlemen:

1. On May 3, 2004, ANR Pipeline Company (ANR) filed a negotiated rate agreement between ANR and Eagle Energy Partners I, L.P. (Eagle) together with a related storage contract (No. 110434) under Rate Schedule FSS, and six related firm transportation contracts (Nos. 110435, 110436, 110437, 110438, 110439, and 110440) under Rate Schedule FTS-1 with negotiated rates. The negotiated rate agreement and storage contract have a term beginning May 1, 2004 and continuing until March 31, 2006. The transportation contracts have terms of November 1 through March 31 each year until March 31, 2006. The Commission accepts the negotiated rate agreement and related contracts effective May 1, 2004.

2. The negotiated rate agreements has a fixed annual demand fee of $2,350,000 in year one and $2,250,000 in year two which Eagle must pay. The agreement provides Eagle will also pay commodity charges, the Annual Charge Adjustment (ACA), and the Transporter's Use charges for Rate Schedules FTS-1 and FSS. In addition, the agreement provides for the sharing of Eagle's revenue from its physical sale of gas plus any NYMEX or seasonal storage spreads earned by Eagle associated with Eagle's use of the agreement. The negotiated rate agreement states that during each annual period of the agreement, Eagle may not pay ANR more that Eagle would have paid under the applicable Rate Schedules FTS-1 and FSS maximum rates, or less than the demand fee of $2.35 million in year one and $2.25 million in year two. ANR and Eagle may extend the agreement for one-year intervals by mutual agreement, and ANR may terminate the

agreement if it does not receive revenues equal or greater than 55 percent of the revenues generated by the maximum tariff rates for each annual period. This agreement is similar to an ANR negotiated rate agreement with NJR Energy Services (NJRES) which the Commission accepted on April 9, 2004 (Chairman Wood dissenting)[1].

3. Public notice of ANR's filing was issued May 7, 2004, with interventions and protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (1999). Pursuant to Rule 214 (18 C.F.R. § 385.214 (1999)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No adverse comments or protests were filed.

4. ANR proposes to charge a negotiated rate based upon a demand rate which includes its variable costs and a revenue sharing mechanism whereby it shares in the revenues that Eagle will receive from gas sales and by using NYMEX index prices under basis or seasonal differentials associated with Eagle's use of the subject negotiated agreement. Under the proposed contracts, ANR agrees to cap the annual revenue that it might earn from this proposal at the amount it would have earned on an annual basis if it had charged the maximum tariff rate for the services involved. This agreement is the same on all substantive issues as the agreement between ANR and NJRES which the Commission accepted on April 9, 2004, in Docket No. RP99-108-006. Accordingly, the Commission accepts ANR's filing to be effective May 1, 2004, for the same reasons set forth in the April 9, 2004 Order.

By direction of the Commission. Chairman Wood dissenting with a separate statement attached.
Commissioner Kelly not participating.

Linda Mitry,
Acting Secretary.

[1] 107 FERC ¶ 61,013 (2004).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ANR Pipeline Company Docket No. RP99-301-113

(Issued June 2, 2004)

Wood, Chairman, dissenting:

I would not have approved this proposed negotiated rate agreement because it gives the pipeline a direct interest in natural gas commodity prices. As I stated in my prior dissent involving a similar transaction (107 FERC ¶ 61,013 (2004)), I believe that one of the greatest benefits to customers from natural gas restructuring in Order No. 636 was the unbundling of pipelines' regulated transportation service from competitive commodity sales service, thus establishing the clear role of pipelines as open access transporters with no direct interest in the price of the commodity. Columbia Gulf Transmission Co., 100 FERC ¶ 61,047 (2002). In our Negotiated Rate Policy Statement we prohibited the use of basis differential pricing in negotiated rate transactions due to the potential for the pipeline to increase its revenues by withholding capacity in order to increase the relevant basis differentials. Natural Gas Pipeline Negotiated Rate Policies and Practices, 104 FERC ¶ 61,134 (2003). There we stated:

> Pricing mechanisms that invest pipelines with an incentive to use market power to manipulate the commodity price of gas hinder the Commission's attempt to maintain and improve the competitive natural gas market. To allow pipelines to acquire an interest in commodity prices, or more precisely the difference between the commodity prices at separate points, reverses the regulatory trend which is based upon the competitive transportation structure acting to ensure competitive natural gas markets. This interest in the prices of the natural gas commodity presents pipelines with an incentive to withhold existing capacity in order to manipulate natural gas prices and may also create a disincentive to invest in the expansion of capacity.

104 FERC at P 22. I remain concerned about any negotiated rate agreement that gives a pipeline an interest in the commodity prices because of the incentive it creates to manipulate the market.

In this case ANR's proposed negotiated rate agreement is inconsistent with the Commission's negotiated rate policy, since it gives ANR a direct interest in the price of gas. Under the proposed agreement, ANR would share the revenues from the physical sale of gas under Eagle Energy Partners' gas sales agreements. Therefore, ANR would have an interest in higher commodity prices and an incentive to manipulate the market to achieve such prices.

I recognize that we have subsequently permitted the use of basis differentials in discounted rate transactions. Northern Natural Gas Co., 105 FERC ¶ 61,299 (2003). However, there we were convinced that the benefits of allowing basis differentials to value the transportation service outweighed the potential harm of giving the pipeline an incentive to withhold capacity largely because the rates were capped at the pipeline's maximum cost-of-service. ANR's proposal, however, goes beyond using basis differentials to value the transportation service and gives the pipeline a direct interest in commodity prices by allowing ANR to share the revenues from the physical sale of gas.

ANR's proposal is contrary to the Commission's negotiated rate policies. Accordingly, I respectfully dissent.

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Pat Wood III
Chairman