140 FERC ¶ 61,181
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

ANR Pipeline Company Docket No. RP12-471-001

ORDER GRANTING REHEARING

(Issued September 6, 2012)

1. On April 30, 2012, ANR Pipeline Company (ANR) filed a request for rehearing of the order accepting tariff records, subject to conditions, that was issued March 30, 2012, in this proceeding (March 30, 2012 Order).[1] In that order, the Commission accepted certain tariff records to become effective April 2, 2012. ANR filed the tariff revisions to accommodate contributions in aid of construction (CIAC) for shipper-owned facilities. As a condition of its acceptance of the filing, the Commission required ANR to functionalize the CIAC of non-jurisdictional facilities and related transactions in non-jurisdictional accounts. The Commission also stated that, in the event that ANR attempts to recover any such costs in its next rate case, ANR must be prepared to justify such costs.

2. In its request for rehearing, ANR contends that the Commission erred by departing from precedent without sufficient explanation when it ordered ANR to functionalize the CIACs of non-jurisdictional facilities and related transactions in non-jurisdictional accounts.

3. As discussed below, the Commission grants rehearing.

<u>Request for Rehearing</u>

4. In its request for rehearing, ANR states that the Commission cited section 284.10(c)(4) of its regulations,[2] and without any additional explanation, held that ANR

[1] *ANR Pipeline Co*., 138 FERC ¶ 61,247 (2012).

[2] 18 C.F.R. § 284.10(c)(4) (2012).

must functionalize the CIACs of non-jurisdictional facilities and related transactions in non-jurisdictional accounts.[3] On rehearing, ANR again asks the Commission to permit it to record non-jurisdictional CIAC costs in jurisdictional accounts.

5. ANR contends that the Commission has a long-standing history of approving an accounting methodology allowing interstate pipeline companies to record CIAC costs in jurisdictional accounts, even when the costs relate to non-jurisdictional facilities.[4] For example, states ANR, in *Kern River*, the Commission approved $8 million in CIAC for a 24-mile lateral, which the Commission recognized would be constructed, owned, and operated by an "existing non-jurisdictional pipeline."[5] ANR asserts that the Commission allowed Kern River to record the CIAC in Account 101, Gas Plant in Service, as a miscellaneous plant asset.[6] Similarly, continues ANR, in *Trunkline,* the pipeline contributed $40 million to assist a non-jurisdictional pipeline in extending its system to interconnect with Trunkline's interstate system.[7] ANR points out that the Commission observed that it "has previously expressed concern regarding recovery of contributions in aid of construction related to facilities that would not be operated under the Commission's open-access policies and regulations."[8] Notwithstanding that concern, states ANR, the Commission approved Trunkline's proposal to record the ". . . contribution in Account 303, Miscellaneous Intangible Plant, . . . consistent with the Commission's Uniform System of Accounts."[9]

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[3] *ANR Pipeline Co*., 138 FERC ¶ 61,247, at P 18 (2012).

[4] ANR cites *Kinder Morgan Interstate Gas Transmission LLC*, 122 FERC ¶ 61,154, at PP 31-32 (2008) (allowing the jurisdictional pipeline's incurred construction costs for non-jurisdictional facilities to be accounted for in Account 303, Miscellaneous Intangible Plant, as a CIAC); *see also Trunkline Gas Company, LLC,* 122 FERC ¶ 61,050, at PP 11-12 (2008) (*Trunkline*); *Kern River Gas Transmission Co*., 77 FERC ¶ 61,299, at 62,334 (1996) (*Kern River*).

[5] ANR cites *Kern River Gas Transmission Co*., 77 FERC ¶ 61,299, at 62,333 (1996).

[6] ANR cites *Kern River Gas Transmission Co*., 77 FERC ¶ 61,299, at 62,334 (1996).

[7] ANR cites *Trunkline Gas Company, LLC*, 122 FERC ¶ 61,050, at 61,340 (2008).

[8] ANR cites *Trunkline Gas Company, LLC*, 122 FERC ¶ 61,050, at 61,342 (2008).

[9] ANR cites *Trunkline Gas Company, LLC*, 122 FERC ¶ 61,050, at 61,342 (2008).

6. ANR maintains that these examples illustrate the Commission's long-standing position regarding the accounting treatment of CIACs. However, states ANR, the Commission appears to have changed that position in *Texas Gas Transmission, LLC* (*Texas Gas*).[10] According to ANR, in that case, the Commission approved a tariff provision allowing the pipeline ". . . to offer a [CIAC] to upgrade non-jurisdictional customer facilities in return for contract extensions of five years or more. . . ."[11] ANR states that one of the Commission's expectations was that Texas Gas would functionalize the CIACs of non-jurisdictional facilities in non-jurisdictional accounts. While ANR reiterates that this appeared to be a departure from established precedent, the pipeline did not challenge the Commission's ruling in that case. Yet, continues ANR, in 2010, the Commission returned to its previous policy and issued a letter order approving the accounting treatment of CIACs for non-jurisdictional facilities in jurisdictional accounts, consistent with its pre-*Texas Gas* orders.[12] Thus, claims ANR, it expected to be allowed to treat any CIAC agreed to under its newly-approved tariff provisions by functionalizing them to jurisdictional accounts.[13]

7. Finally, ANR contends that the Commission's concern regarding recovery of CIAC costs from shippers, as stated in *Trunkline,*[14] is not compromised by an accounting treatment that functionalizes such costs to jurisdictional accounts. ANR points out that the Commission has stated repeatedly that CIAC costs to be functionalized to jurisdictional accounts would be for accounting purposes only, and inclusion of CIAC

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[10] 128 FERC ¶ 61,104 (2009).

[11] ANR cites *Texas Gas Transmission, LLC*, 128 FERC ¶ 61,104, at 61,552 (2009).

[12] ANR cites Williston Basin Interstate Pipeline Co., Letter Order Approving Williston Basin Interstate Pipeline Company's June 25, 2010 letter requesting approval of proposed accounting to amortize two CIACs under AC10-140, Docket No. AC10-140, at pp. 1-2 (September 7, 2010) (approving the recording of a CIAC to Montana-Dakota Utilities Co. in Account 303, Miscellaneous Intangible Plant, by debiting Account 404.3 Amortization of Other Limited-Term Gas Plant, and crediting Account 111, Accumulated Provision for Amortization and Depletion of Gas Utility Plant).

[13] To clarify, ANR states that it would record its CIACs in Account 303 and amortize the amount to the cost of service over the term of the transportation agreement. *See Kern River Gas Transmission Co*., 77 FERC ¶ 61,299, at 62,334 (1996); *Northern Natural Gas Co*., 72 FERC ¶ 61,163, at 61,804 (1995).

[14] ANR cites *Trunkline Gas Company, LLC*, 122 FERC ¶ 61,050, at 61,342 (2008).

costs in the pipeline's rate base would not be automatic, but would be subject to Commission scrutiny in future rate proceedings.[15] Accordingly, concludes ANR, if it is permitted to apply a similar jurisdictional accounting treatment to its CIACs, there can be no effect on ANR customers' rates or charges until a future rate proceeding, and then only to the extent that ANR chooses to seek recovery of CIAC costs in its rates and the Commission approves those rates or charges.

Commission Analysis

8. ANR's proposed tariff revision would allow it to provide a CIAC to a shipper for the modification or construction of non-jurisdictional facilities to be owned by the shipper in exchange for a long-term contract to provide jurisdictional service. Because of its concern about automatic inclusion of such payments in ANR's rates, the Commission directed in the March 30, 2012 Order that ANR functionalize any such CIAC payments in non-jurisdictional accounts.

9. However, upon further consideration, the Commission grants rehearing of the March 30, 2012 Order and will not require ANR to functionalize CIAC payments for shipper-owned non-jurisdictional facilities in non-jurisdictional accounts. The Commission historically has authorized natural gas pipeline companies to record CIAC payments as intangible gas plant in Account 303, Miscellaneous Intangible Plant, even if the costs are related to non-jurisdictional facilities. This accounting records the CIAC within the Intangible Plant function of Gas Plant Accounts, separate from the Transmission Plant function, and does not provide a guarantee of rate recovery of these costs in jurisdictional rates. The Commission has held that a natural gas pipeline must still make a showing in a rate proceeding that the CIAC payment was reasonable, prudent, and allowable in jurisdictional rates before it can collect the CIAC costs from its customers.[16]

10. Accordingly, the Commission will allow ANR to record CIAC payments in Account 303, a subaccount of Account 101, Gas Plant in Service. ANR must amortize the CIAC payments over the term of the related transportation agreement by debiting

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[15] ANR cites *Pacific Connector Gas Pipeline, LP, Jordan Cover Energy Project, L.P.*, 129 FERC ¶ 61,234, at 62,125 (2009); *Trunkline Gas Company, LLC*, 122 FERC ¶ 61,050, at 61,342 (2008); *Kern River Gas Transmission Co.*, 99 FERC ¶ 61,085, at 61,372 (2002); *Southern Natural Gas Co.*, 85 FERC ¶ 61,330, at 62,298 (1998); *Northern Natural Gas Co.*, 72 FERC ¶ 61,163, at 61,804 (1995).

[16] *E.g.*, *Kinder Morgan Interstate Gas Transmission LLC*, 122 FERC ¶ 61,154, at PP 31-32 (2008); *Trunkline Gas Company, LLC,* 122 FERC ¶ 61,050, at PP 11-12 (2008); *Kern River Gas Transmission Co.*, 77 FERC ¶ 61,299, at 62,334 (1996).

Account 404.3, Amortization of Other Limited-Term Gas Plant, and crediting Account 111, Accumulated Provision for Amortization and Depletion of Gas Utility Plant.

The Commission orders:

Rehearing of the March 30, 2012 Order is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.