UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

ANR Pipeline Company | Docket No. RP04-201-001

ORDER ON COMPLIANCE FILING

(Issued July 13, 2004)

1. On April 14, 2004, ANR Pipeline Company (ANR) filed a response to questions asked by the Commission in a March 30, 2004 Order on ANR's annual fuel filing.[1] That order accepted and suspended, subject to refund and conditions, effective April 1, 2004, ANR's tariff sheets filed to establish its annual Transporter's Use (%), i.e., fuel use percentages and lost-and-unaccounted for (L&U) gas percentages. For the reasons discussed below, the Commission finds that ANR's tariff sheets concerning fuel use and L&U gas are not just and reasonable. Rather, the facts of this case and industry practice support requiring ANR to establish a fuel tracker with a true-up mechanism. This decision benefits the public because it requires the pipeline to track and true-up its actual fuel use costs thereby relieving both the pipeline and the shippers of under or over recoveries and ensuring that all parties are kept whole.

Background

2. Section 1.68 of ANR's General Terms & Conditions (GT&C) requires ANR to re-determine its "Transporter's Use (%)" as of April 1 of each year. ANR's Transporter's Use (%) includes two separate percentages, one of which compensates ANR for the fuel used in its operations, the fuel use percentage, and the other compensates ANR for L&U gas. Section 1.68 requires ANR to calculate its fuel use percentage by dividing the average of the three previous calendar years' actual compressor fuel use in each rate segment by the average of the net physical throughput in each rate segment for the same time period. Section 1.68 further requires that the L&U gas percentages be calculated by dividing the average of the four previous calendar years' L&U gas quantities by the average annual sales, transportation and storage quantities for the same four years.

[1] ANR Pipeline Company, 106 FERC ¶ 61,328 (2004) (March 30, 2004 Order).

Unlike virtually every other pipeline, the tariff currently lacks a true-up adjustment for fuel over or under collections.

3. Existing section 1.68 describes how ANR re-determines its fuel use and L&U gas. ANR calculates fuel use and L&U gas based on averaging the previous years' L&U volumes in an attempt to "smooth" out the differences. The fuel use calculation has been an issue on ANR's system for a number of years.[2] More recently, ANR's fuel methodology was modified in Docket No. RP01-559-000. On January 30, 2002,[3] the Commission approved an Uncontested Settlement (Settlement) in which ANR and its shippers agreed to the current Transporter's Use (%) throughput methodology. The Settlement provided that ANR would apply the settlement's methodology on ANR's annual fuel matrix re-determination filings for the two succeeding filings and that in the filing due on March 1, 2004, the parties could review the results of adopting the settlement methodology and any party could propose changes to that filing or subsequent (fuel use) filings.[4]

4. On March 30, 2004, the Commission accepted and suspended, subject to refund and conditions, ANR's March 1, 2004 annual fuel re-determination filing which established levels of fuel use percentages and L&U gas percentages. The Commission required ANR to address a number of questions concerning its Transporter's Use (%) filing and provided shippers with the opportunity to comment on ANR's compliance filing and respond to ANR's explanation. ANR was required to provide information for the years 2001 through 2003 indicating where data on the L&U volumes is located on its Form No. 2 or other publication. ANR was also directed to respond to the following questions: (1) whether its annual re-determination filing is based on estimated data that is later revised; (2) if based on estimated data, how such revised data affects the fuel use and L&U percentages for previous years and the current filing; (3) what over or

[2] See ANR Pipeline Company, 98 FERC ¶ 61,053 (2002); 94 FERC ¶ 61,355 (2001); 82 FERC ¶ 61,273 (1998); 82 FERC ¶ 61,248 (1998); 81 FERC ¶ 61,414 (1997); 78 FERC ¶ 61,328 (1997); 78 FERC ¶ 61,290 (1997); 74 FERC ¶ 61,343 (1996); 72 FERC ¶ 61,126 (1995); 60 FERC ¶ 61,145 (1992); 59 FERC ¶ 61,347 (1992); 58 FERC ¶ 61,306 (1992); and 55 FERC ¶ 61,151 (1991).

[3] See ANR Pipeline Company, 98 FERC ¶ 61,053 at 61,138.

[4] Id. The effective date of the Uncontested Settlement was January 1, 2002, but there was no provision for the applicable term of the Settlement other than parties were permitted to propose changes to ANR's fuel filing for the filing due on March 1, 2004, which provided parties with sufficient time to evaluate the results of the settlement methodology.

underrecoveries of compressor fuel and L&U gas have been incurred since the settlement was approved; and (4) whether ANR interprets the tariff provisions adopted pursuant to the settlement as requiring it to absorb any underrecoveries, while retaining any overrecoveries. All parties were permitted to comment on whether ANR's tariff should be changed to require a tracking of over and under-recoveries in its annual fuel use re-determination filings.

The Compliance Filing

5. On April 14, 2004, ANR submitted a response to the questions raised in the March 30, 2004 Order. ANR addressed the Commission's concern about where the data for 2001 through 2003 on L&U volumes is located on its Form No. 2. ANR indicates that the Form No. 2 data no longer matches the data used in ANR's Transporter's Use (%) filing because of a different accounting period between the filing and Form No. 2. ANR explains that it has changed the presentation of its Form No. 2 data because the accounting period data reported in Form No. 2 no longer directly matches the actual annual period that is used for the fuel filing. ANR then provided tables reconciling the Form No. 2 data to the L&U volumes for 2001 through 2003.[5] These tables indicate that (1) in 2001 there was a difference of 1,201,706 Dth between the 2001 Form No. 2 data and ANR's fuel filing; (2) in 2002 there was a difference of 579,245 Dth between 2002 Form No. 2 data and ANR's fuel filing; and (3) in 2003 there was a difference of 763,668 Dth between the 2003 Form No. 2 data and ANR's fuel filing. For the three year period 2001–2003, there was a cumulative difference of 2,544,619 Dth between ANR's Form No. 2 and its fuel filing.

6. In response to the question concerning whether it uses estimates for the fuel filing, ANR asserts that it does not use estimated data for fuel use and line loss. ANR indicates that the fuel redetermination filing uses actual monthly production which is provided in the workpapers submitted to the Commission and is available to any party upon request.[6] The March 30, 2004 Order also directed ANR to describe what over or underrecoveries of compressor fuel and L&U gas it has incurred since the Settlement was approved. ANR reports that, using the actual production data since the Settlement went into effect, it overcollected 4,521,002 Dth of fuel and L&U in 2002 and undercollected 970,848 Dth of fuel and L&U in 2003, resulting in a net overcollection of 3,550,154 Dth for the two year period.

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[5] The L&U volumes are reported on lines 13, 26, 32, and 36 on pages 520 and 520a of ANR's Form No. 2.

[6] Because the fuel filing is not based on estimated data, ANR did not address the Commission's question on this issue.

7. Lastly, in response to whether ANR interprets its tariff provisions adopted pursuant to the Settlement as requiring ANR to absorb any underrecoveries, while retaining any overrecoveries, ANR asserts that there is no option to recover underrecoveries or requirement for ANR to refund overrecoveries. ANR contends that its fuel determination mechanism acts to provide a long-term incentive to improve the efficiency of its system while smoothing out year to year variations in Transporter's Use %.

Interventions and Protests

8. Public notice of the compliance filing was issued on April 20, 2004, allowing for protests to be filed as provided in section 154.210 of the Commission's regulations. Indicated Shippers[7] filed comments contending that ANR should be required to implement a fuel tracker with a true-up mechanism. On May 19, 2004, ANR filed reply comments to Indicated Shippers' comments. While the Commission's Rules of Practice and Procedure generally prohibit answers to protests or answers, pursuant to Rule 213 of the Commission's regulations,[8] the Commission will accept ANR's answer in this proceeding to allow a better understanding of the issues. No other party filed adverse comments or protests to the filing.

9. In their comments, Indicated Shippers argue that any positive benefit of the current tariff provision requirement that the fuel use percentages be calculated by dividing the average of the three previous calendar years is outweighed by the significant over collection of fuel by ANR.[9] Indicated Shippers contend that because of the history of over-collected fuel on ANR's system the Commission should require ANR to implement a fuel tracker with a true-up mechanism. In the alternative, Indicated Shippers suggest the Commission refer this matter to an Administrative Law Judge who could evaluate the proposal and decide upon the type of administrative procedures to permit the facts to be developed in order to evaluate the mechanism for calculating and accounting

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[7] Indicated Shippers consists of: BP America Production Company, BP Energy Company, ChevronTexaco Natural Gas, A Division of Chevron U.S.A. Inc., ConocoPhillips Company, ExxonMobil Corporation, and Shell Offshore Inc.

[8] 18 C.F.R. § 385.213(a)(2) (2003).

[9] Indicated Shippers further argue that because ANR's accounting year as reported in its Form No. 2 changed to December through November, while the 12-month period set forth in its fuel filings remains the calendar year, its annual fuel filing is comprised of data from two different Form No. 2's.

for fuel and L&U percentages on ANR's system. Indicated Shippers point out that ANR has a net over recovery of fuel and gas losses of 32,858,694 Dth based on Form No. 2 data for the 1996–2002 period. Indicated Shippers argue that a traditional fuel tracker[10] would allow ANR to recover from its shippers any underrecoveries and also would require ANR to refund to its shippers any overrecoveries thus taking the risk off both the pipeline and customers, and allowing the pipeline to recover the fuel costs actually incurred.

10. Indicated Shippers contend that since ANR has significantly overcollected fuel for the six year period of 1996-2002, its fuel mechanism improperly allows it to overrecover its fuel cost by a large amount on a consistent basis and therefore should be revised.[11] Indicated Shippers request that ANR be required to implement an annual fuel tracker mechanism so that shippers can receive credit for any overcollections through a decrease in the following year's fuel percentage and conversely ANR can increase the following year's fuel percentage to account for a prior year's under collections.

11. Specifically, Indicated Shippers request that the fuel tracker mechanism (1) have a twelve-month period of data in the fuel filing that coincides with the twelve-month period included in ANR's Form No. 2 and that the filing be made pursuant to the Periodic Rate Adjustment provisions in the Commission regulations at § 154.403; (2) require ANR to provide sufficient actual detailed monthly data to support the proposed changes, including, receipt point volumes, delivery point volumes, fuel use volumes, and unaccounted for volumes; (3) have a true-up mechanism for the previous twelve-month period to account for any overcollections or undercollections (with overcollections in the prior year resulting in a decrease in the calculated fuel and undercollections resulting in an increase in the calculated fuel percentage); (4) require that ANR continue to use actual data in calculating its fuel use and L&U percentages; (5) permit mid-year changes to the fuel rate, i.e., permit ANR to file lower fuel percentages during times between the annual fuel re-determination filings but not to file for an increase at a time other than its annual redetermination filing; (6) permit ANR to discount fuel on a not unduly discriminatory basis in accordance with FERC policy, but not to discount or waive the fuel use and L&U charge; (7) require ANR to separately state its fuel use and L&U percentage in its tariff;

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[10] Hereafter, the term "fuel tracker" is used to mean the widely used type of fuel recovery provision that includes a true-up mechanism.

[11] Indicated Shippers Comments at 5 (citing Northern Natural Gas Co., 80 FERC ¶ 61,332 at 62,105-06 (1997) (Northern Natural) (requiring the pipeline to include a true-up mechanism to relieve both the pipeline and the shippers of the risk of over-or-underrecovery, and finding that the Commission requires a true-up mechanism when the facts of the case so require).

and (8) require ANR to include in its annual fuel filing a narrative explanation of how it measures and calculates the fuel use and L&U quantities reflected in the fuel redetermination filing.

12. ANR's reply comments contend that Indicated Shippers failed to show that the existing Transporter's Use (%) mechanism is unjust and unreasonable, and therefore there is no need for modification. ANR argues that although there were a number of years in which it collected more gas from customers than needed, that does not prove that the mechanism is unjust or unreasonable. ANR contends that its customers have benefited from the current mechanism by a long-term reduction in Transporter Use (%). ANR points out that between 1996 and 2004 there has been a dramatic improvement in the Transporter Use (%) for all routes on its system, stating that one of its most heavily nominated routes, the Southwest area to Northern Segment, registered a 25% drop in Transporter's Use (%) during the period. ANR cites a Commission order issued March 14, 1997,[12] in which the Commission ruled on ANR's annual fuel matrix redetermination filing, and declined to implement a fuel tracker requested by the Wisconsin Distributor Group (WDG). In that case, WDG claimed that ANR should be required to implement a fuel tracker because it had over-collected 9.5 Bcf of gas from its sales customers from November 1992 to October 1993. ANR contends that the Commission denied WDG's request, finding that WDG failed to show that a fuel tracker is necessary, nor how WDG had been harmed by the absence of one. Further, ANR asserts that the Commission found that its fuel mechanism is consistent with the Commission's general cost-based ratemaking procedures; however the Commission did indicate that if ANR were over-collecting fuel, the Commission could reassess the need for changes to the fuel provisions, including a true-up mechanism at that time.[13]

13. ANR contends that Indicated Shippers ignore the long term decline in fuel use on ANR's system and its linkage with the over-recoveries experienced and contend that over-recoveries in and of themselves are insufficient justification to change the mechanism to an annual fuel tracker. ANR contends that Northern Natural is not applicable due to completely different circumstances. First, Northern Natural was filing to put in place a new annual tracker mechanism based on a single year of actual data without a true-up and thus Northern Natural bore the burden of proof. Second, Northern Natural was instituting a radical change in fuel percentages and methodology at the same time that it was installing more efficient compressors. Third, ANR asserts that the Commission decision in Koch Gateway provides the relevant precedent, where a pipeline

[12] ANR Pipeline Co., 78 FERC ¶ 61,290 (1997).

[13] Id. at 62,267.

has proposed no changes to its fuel recovery tariff provisions and the last year of relevant experience has been an underrecovery by the pipeline.[14]

Discussion

14. The Commission generally does not permit pipelines to change one element of their cost-of-service outside of a general section 4 rate case where all elements of the pipeline's cost-of-service may be considered and increases in one element may be affected by decreases in another. However, section 154.403 of the Commission's regulations permits a pipeline to adjust fuel use percentages in periodic limited rate filings pursuant to a methodology set forth in the pipeline's tariff. Section 154.403(c)(11) contemplates that the methodology may include a provision for truing up past under and overrecoveries, but does not require such a true-up provision. However, the Commission has stated that, if a pipeline constantly overcollects its fuel, it may require a true-up mechanism.[15]

15. ANR's Form No. 2 data reflects that ANR has over collected fuel use volumes for 7 of the last 8 years (1996-2003), with a cumulative over collection of approximately 32.1 Bcf for this period. For the most recent two years, 2002 and 2003, there was an over collection of 4,521,002 Dth and an under collection of 970,848 Dth, resulting in a net over collection of 3,550,154 Dth. Based on the current midpoint price of gas of $6.375 per MMBtu on ANR's system,[16] the net overcolletion of 3,550,154 Dth represents approximately $22.6 million for this two year period. ANR's tariff does not provide for any refund of over collected fuel (or the recovery of under collected fuel), with ANR retaining the substantial revenues resulting from the overcollection. ANR contends that its customers have benefited from the current mechanism resulting in a long-term reduction in fuel use gas and that the averaging approach smoothes out the variances in fuel use. We disagree. Whatever "smoothing" has occurred, there has been a clear bias toward overcollection. We thus find ANR's Transporter's Use (%) methodology is

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[14] ANR cites to Koch Gateway Pipeline Company, 85 FERC ¶ 61,426 at 62,611 (1998) in which the Commission stated "Indicated Shippers support the establishment of a fuel tracker which, it claims, would match actual costs with the fuel rates charged to shippers. But there is no requirement that Koch have a fuel tracker. . . . Generally, the Commission does no favor trackers. The fact that the settlement does not have a fuel tracker is thus consistent with Commission policy and regulations" [citations omitted].

[15] See ANR Pipeline Company, 78 FERC ¶ 61,290 at 62,267 (1997).

[16] See "Platts Gas Daily," issued Wednesday June 16, 2004 at 2, published by The McGraw Hill Companies.

unjust and unreasonable because it does not smooth out the significant long-term overcollection of gas on ANR's system, which ANR retains.

16. There are only a few pipelines, such as Tennessee Gas Pipeline Company and Gulf South Pipeline Company, LP, which do not employ a fuel tracking mechanism to true-up their fuel costs on an annual basis. These few pipelines establish their fuel use percentages and recovery in a general section 4 rate proceeding. All other interstate pipelines, track their fuel use and L&U percentages in an annual tracker filing which requires them to true-up over and under collections on an annual basis. ANR is the only pipeline whose tariff requires that it submit an annual fuel adjustment filing without also requiring ANR to use a true-up mechanism.[17]

17. Historical information has demonstrated that ANR's averaging method does not result in an accurate quantity of fuel being retained for fuel use and L&U. Based on just the last two years of fuel recovery, and the current price of gas on ANR's system, ANR has collected approximately $22.6 million in revenue by overcollecting fuel. In light of this significant overcollection of gas on ANR's system for 7 of the last 8 years, we shall require ANR to adopt a fuel tracker to insure that ANR's fuel use and L&U gas is just and reasonable in the future. A fuel tracking mechanism will promote such accuracy and will keep the pipeline whole, thereby ensuring that no party gains or loses. No other pipeline that makes an annual fuel adjustment filing does so without a fuel true-up mechanism. Pipelines either have trackers with a true-up so that over and under recoveries are resolved annually or the pipeline files a general section 4 rate proceeding whereby all costs are reviewed and resolved in the rate case. ANR's current mechanism is uniquely out of step with most natural gas companies.

18. The Commission finds that circumstances here require ANR to prospectively adopt a fuel tracker mechanism in order to permit ANR to accurately adjust its fuel use charge annually.[18] Accordingly, ANR is directed, pursuant to section 5 of the Natural Gas Act, to develop a true-up mechanism which accounts for the over and under recovery of gas. ANR must file pro forma tariff sheets establishing a fuel true-up mechanism so that the parties and the Commission can review ANR's proposed mechanism to

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[17] Although East Tennessee Natural Gas Company's tariff (at Sheet Nos. 11 and 23) permits East Tennessee to submit an annual fuel and loss filing, it has not made such a filing since at least 1994.

[18] Alternatively, ANR can file a general section 4 rate proceeding to establish its Transporter's Use (%).

determine if it conforms to Commission policy.[19] ANR should evaluate and incorporate the elements proposed by Indicated Shippers where such elements of the tracking mechanism are appropriate and consistent with other pipeline fuel tracking mechanisms.[20] ANR is directed to make such a filing within 30 days of this order.

19. Finally, contrary to ANR's claim, our decision in Koch Gateway[21] is not relevant here, because that case involved a settlement of a section 4 rate filing. Our decision here is consistent with the terms of the Settlement concerning ANR's existing tariff provision because the Settlement permitted a review of the Settlement's annual fuel matrix re-determination methodology in this proceeding and permitted parties to propose changes to that methodology.[22]

The Commission orders:

Within 30 days of the date of this order, ANR is directed to file pro forma tariff sheets implementing a fuel tracker mechanism.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

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[19] ANR is also directed to reconcile Form No. 2 data to its fuel use filing so parties can trace the line loss volumes – currently it is difficult to reconcile ANR's Form No. 2 data to the annual re-determination of Transporter's Use (%) filing. For the past three years (2001–2003), there was a difference of 2,544,619 Dth between ANR's Form No. 2 filing and its Transporter's Use (%) filing.

[20] The Commission finds that Indicated Shippers' proposal that mid-year changes be permitted only for ANR to lower its fuel percentage and not increase the fuel percentage except for in its annual filing is inappropriate and not consistent with other pipelines' fuel tracking mechanisms.

[21] Koch Gateway Pipeline Co., 85 FERC ¶ 61,426 (1998).

[22] See ANR Stipulation and Agreement, Docket No. RP01-259-000, Article II, section 2.2 (Future Years); see also ANR Pipeline Co., 98 FERC ¶ 61,053 (2002) (order approving settlement).