

125 FERC ¶ 61,059
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

October 15, 2008

In Reply Refer to:
ANR Pipeline Company
Docket Nos. RP08-97-000 and
RP08-97-002

Greenberg Traurig, LLP
Attn: Howard L. Nelson, Esq.
Attorney for ANR Pipeline Company
2101 L Street, N.W.
Suite 1000
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Dear Mr. Nelson:

1. You filed, on behalf of ANR Pipeline Company (ANR), a Stipulation and Agreement (Settlement) in the above-referenced docket on August 7, 2008. The Settlement comprehensively resolves all issues set for hearing in the Commission's December 28, 2007 Order Accepting and Suspending Tariff Sheet Subject to Refund and Conditions, and Establishing Hearing Procedures (December 28, 2007 Order).¹
2. Commission Trial Staff and High Island Offshore System, L.L.C (HIOS), filed initial comments in support of the Settlement on August 15, 2008 and August 18, 2008, respectively. No reply comments were filed. The Presiding Judge certified the Settlement to the Commission as uncontested on September 5, 2008. The major provisions of the Settlement are summarized below.
3. Article I provides background and Article II states that the Settlement will supersede and terminate the prior Commission-approved Settlement Agreement in Docket No. RP07-99-000. The request for rehearing in Docket No. RP08-97-002 will be deemed withdrawn.
4. Article III provides that HIOS will pay ANR \$205,500 per month to fulfill HIOS's cost of service obligation under Rate Schedule X-64 (Settlement Charge). The Settlement Charge will be effective January 1, 2008 and will remain in effect until Rate

¹ *ANR Pipeline Co.*, 121 FERC ¶ 61,301 (2007).

Schedule X-64 terminates on December 31, 2015. ANR will retain the \$297,667 paid in each of the first six months of 2008 pursuant to ANR's Rate Schedule X-64 revisions accepted in the December 28, 2007 Order (Filed Rate Charge). HIOS, however, will only pay \$126,433 for Rate Schedule X-64 services in each of the final six months of 2008. This figure represents the difference between the Filed Rate Charge and the Settlement Charge, less monthly carrying charges retained by ANR. The adjustments will operate in lieu of refund. For the limited purpose of a future HIOS rate proceeding, HIOS will be deemed to have paid the Settlement Charge in each month of 2008.

5. Article IV defines and preserves ANR's right to recover charges in excess of the Settlement Charge to the extent such charges result from catastrophic storms occurring after December 31, 2007, as well as ANR's obligations in seeking any such additional expenses.

6. Article V defines "Consenting" and "Contesting" parties, and their rights and obligations under the Settlement.

7. Article VI establishes conditions precedent to the Settlement becoming effective, and procedures for adjustments and refunds under the Settlement.

8. Article IX specifies that (1) any changes to the Settlement proposed by a Consenting Party or a Contesting Party shall be reviewed under a *Mobile-Sierra* standard of review; and (2) any changes to the settlement proposed by non-parties to the proceeding shall be reviewed under the most stringent standard permissible under applicable law. The Commission retains the right to investigate the rates, terms and conditions under the just and reasonable standard set forth in section 4 of the Natural Gas Act, 15 U.S.C. § 717c (2000). The Settlement is fair and reasonable, and in the public interest, and is approved. Commission approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue involved in these proceedings.

9. This Letter Order terminates Docket Nos. RP08-97-000 and Docket No. RP08-97-002.

By direction of the Commission. Commissioner Kelly concurring in part
with a separate statement attached.

Kimberly D. Bose,
Secretary.

cc: All Participants

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ANR Pipeline Company

Docket Nos. RP08-97-000
RP08-97-002

(Issued October 15, 2008)

KELLY, Commissioner, *concurring in part*:

The proposed standard of review in the settlement would have the Commission apply the “most stringent standard permissible under applicable law” to changes proposed by non-parties. In *Maine Public Utilities Commission v. FERC*, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) made clear that when a rate challenge is brought by a non-contracting third party, the “proper standard of review” is the “just and reasonable” standard.¹ The majority accepts ambiguous contract language despite the fact that the D.C. Circuit has already definitively spoken on this issue. Therefore, the “most stringent standard permissible under applicable law” in this instance means the “just and reasonable” standard of review.

For these reasons, I concur in part.

Suedeem G. Kelly

¹ *Maine Public Utilities Commission v. FERC*, 520 F.3d 464, 478, *petition for reh’g denied* __ F.3d __ (D.C. Cir. 2008) (*Maine PUC*).