

128 FERC ¶ 61,183
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

ANR Pipeline Company

Docket No. CP08-465-000

ORDER ISSUING CERTIFICATE

(Issued August 24, 2009)

1. On August 20, 2008, ANR Pipeline Company (ANR) filed an application under section 7 of the Natural Gas Act (NGA) requesting a certificate of public convenience and necessity authorizing it to construct and operate approximately 8.9 miles of 30-inch pipeline to loop an existing lateral in Rock County, Wisconsin, and related facilities to meet growing demand for natural gas service (Wisconsin 2009 Expansion Project). For the reasons discussed herein, the Commission will issue the requested certificate, subject to conditions.

I. Background and Proposal

2. ANR is a Delaware corporation with its principal place of business in Houston, Texas. It is a wholly-owned indirect subsidiary of TransCanada American Investments Limited. ANR operates approximately 10,600 miles of interstate pipeline extending from Texas and Oklahoma, as well as from the Gulf Coast producing areas, to points in Wisconsin and Michigan. ANR provides storage and transportation services to customers in both the United States and Canada.

3. ANR states that the demand for natural gas in Wisconsin has increased over 23.4 percent since 1990, with natural gas accounting for over half of all energy consumed in the state's industrial and residential markets.¹ Recognizing this increased demand for natural gas service in Wisconsin and to assess its customers' growing requirements, ANR conducted an open season and also solicited offers from its existing customers to turn back capacity between October 16 and November 16, 2007. ANR states that it received requests for firm capacity in excess of 170,000 dekatherms per day (Dth/d) from local

¹ Citing *Wisconsin Energy Statistics 2007*, Executive Summary, at 1.

distribution companies, marketers, power developers, and end-users but no customers offered to turn back capacity.² Following the close of the open season, ANR executed binding precedent agreements for total incremental capacity of 91,400 Dth/d.³

4. To accommodate the requests for incremental service, ANR proposes to construct and operate approximately 8.9 miles of 30-inch diameter pipeline to extend the existing loop of its Madison Lateral in Rock County, Wisconsin.⁴ The proposed pipeline will originate at a receiver site along the east side of U.S. Highway 14 near its intersection with Drott Road and will run in a northwesterly direction, to its termination at the Janesville Compressor Station, located on the north side of Miles Road near its intersection with Consolidated School Road. ANR states that approximately 3.4 miles of the new loop extension will be constructed parallel to an existing 12-inch pipeline. ANR also proposes to install two mainline control valves, one at the Marshfield compressor station in Wood County, Wisconsin, and the other at the Fairwater meter station in Columbia County, Wisconsin. It will also make minor upgrades to the appurtenant facilities at the Marshfield compressor station, the North Wausau meter station in Marathon County, Wisconsin, and the Randolph meter station in Columbia County, Wisconsin.⁵

5. ANR proposes to charge its Wisconsin 2009 Expansion Project customers incremental recourse rates under Rate Schedules FTS-1 and ETS and will allow shippers

² Although no customer offered to turn back capacity during the open season, Wisconsin Public Service Corp. subsequently terminated contracts for 75,796 Dth/d used to service Green Bay and West Green Bay. ANR reserved 50,000 Dth/d of the 75,796 Dth/d for use in conjunction with the Wisconsin 2009 Expansion Project as discussed below. ANR refers to this capacity as being “turned back.” See ANR November 10, 2008 Reply To Answer at 4.

³ The customers include Xcel Energy, Madison Gas and Electric, Didion Mills Inc., Wisconsin Public Service Commission, United Wisconsin Grain Producers, and Integrys Energy.

⁴ In 2003, the Commission authorized ANR to construct a 30-inch, 26.3-mile loop of its existing Madison Lateral, *ANR Pipeline Co.*, 103 FERC ¶ 61,297 (2003). In 2006, ANR extended the loop another 3.78-miles. *ANR Pipeline Co.*, 113 FERC ¶ 61,255 (2005).

⁵ Upgrades at the meter stations will generally consist of minor increases in pipe sizes, installation of piping for bi-directional capabilities, modifications to control equipment, upgrading of cathodic protection and other associated equipment necessary for the operation of the modified meter station.

to negotiate their rates. The proposed incremental recourse rates equate to approximately \$0.2114 per Dth and \$0.2314 per Dth, respectively. The derivation of these rates as well as other rate matters are discussed in the rate section of this order.

II. Procedural Issues

6. Notice of ANR's application was published in the *Federal Register* on September 8, 2008 (73 Fed. Reg. 52,034). Fourteen timely, unopposed motions to intervene were filed.⁶ Such motions are granted by operation of Rule 214 of the Commission's regulations.⁷

7. SEMCO Energy Gas Company (SEMCO) filed an untimely motion to intervene. SEMCO has demonstrated an interest in this proceeding and the Commission finds that the late intervention will not delay, disrupt, or otherwise prejudice this proceeding. Therefore, under Rule 214 we will grant SEMCO's motion to intervene out-of-time.⁸

8. Timely protests were filed by Wisconsin Electric Power Company (Wisconsin Electric) and Wisconsin Gas LLC (Wisconsin Gas) (jointly We Energies) and Wisconsin Public Service Corp. (Wisconsin Public Service).⁹ Although We Energies and Wisconsin Public Service do not object generally to ANR's Wisconsin 2009 Expansion Project, they contend that the Commission should not approve the project until the applicability of provisions contained in Section 36 of the General Terms and Conditions of ANR's FERC Gas Tariff to the project is resolved. The substance of these protests will be discussed below.

⁶ Those filing timely, unopposed motions include: Alliant Energy Corporate Services, Inc.; BP Canada Energy Marketing Corp.; Didion Ethanol, LLC; Integrys Energy Services, Inc.; City of Janesville; Madison Gas and Electric Co.; Michigan Consolidated Gas Co.; Michigan Gas Utilities Corp.; Northern Natural Gas Co.; Northern States Power Co.-Minnesota and Northern States Power Co.-Wisconsin (jointly); The Peoples Gas Light and Coke Co. and North Shore Gas Co. (jointly); and ProLiance Energy, LLC; Wisconsin Electric Power Co. and Wisconsin Gas LLC (jointly); and Wisconsin Public Service Corp.

⁷ 18 C.F.R. § 385.214(c) (2009).

⁸ 18 C.F.R. § 385.214(d) (2009).

⁹ The City of Janesville also filed a protest to the application in opposition to the proposed pipeline route through a park in Janesville. The city withdrew its protest on February 25, 2009, after reaching an agreement with ANR regarding a minor route variation along the pipeline route and easement conditions.

9. We Energies requests that the Commission hold an evidentiary hearing in this proceeding to investigate: whether ANR has complied with the terms of the Marshfield Settlement, described below; whether there is still an operational need for ANR's system to receive specified gas flows from Viking Gas Transmission Co. at the Marshfield receipt point in Wisconsin; whether other operational changes on ANR's system have occurred; and whether the Marshfield shippers, who are subject to certain flow obligations, as discussed below, will be harmed if the Wisconsin 2009 Expansion Project goes through without ANR's first meeting certain obligations to the Marshfield shippers included in its FERC Gas Tariff.

10. The Commission will deny We Energies' request for an evidentiary, trial-type hearing. There is no need in this proceeding for the type of hearing that allows the parties to test the credibility of witnesses through cross examination. Rather, the Commission can make a determination on the issues presented herein based on the written record. Since the time We Energies requested an evidentiary hearing in its protest, the parties have filed numerous pleadings expanding the record. Further, ANR provided detailed responses to data requests from Commission staff. The Commission concludes that the written record in this proceeding is adequate to resolve the issues raised and to determine whether the Wisconsin 2009 Expansion Project is required by the public convenience and necessity.¹⁰ For these reasons, we will deny We Energies' request for a trial-type hearing.

11. We Energies also filed a supplement to its protest on November 24, 2008, requesting that the Commission reject ANR's application in this proceeding as deficient because it asserts that ANR's November 10, 2008 filing demonstrates that the steady-state flow diagrams submitted by ANR in its application are insufficient for the parties or the Commission to evaluate ANR's proposal. In the alternative, We Energies requests the Commission to direct ANR to file flow diagrams using a transient model.¹¹

12. The Commission will deny We Energies request that we reject ANR's application. As We Energies acknowledges, the Commission's regulations do not specify the type of flow diagrams which must be filed with a certificate application.¹² Further, ANR filed a

¹⁰ See *El Paso Natural Gas Co.*, 104 FERC ¶ 61,045, at P 63 (2003) (technical issues are usually able to be resolved on the written record).

¹¹ We note that it is impossible to depict the constant varying operating parameters resulting from transient operations on a flow diagram.

¹² See *El Paso Natural Gas Co.*, 104 FERC ¶ 61,045, at P 73 (2003). (Commission's regulations anticipate filing of flow diagrams that show existing and maximum pressures under most favorable operating conditions based on a steady-state model). See also, section 157.(a) (7) and (8), 18 C.F.R. § 157.(a) (7) and (8) (2009).

transient model for its system on July 23, 2009, which did provide sufficient information to enable the Commission to analyze the effects of ANR's proposed project on the operation of its system

13. ANR requested that its transient model filed on July 23, 2009 be given confidential treatment pursuant to Rule 112 of the Commission's regulations,¹³ alleging that it contained system design and other information which, if divulged, could cause competitive injury to ANR. We Energies filed a letter in this proceeding on August 3, 2009, indicating that it had filed a Freedom of Information Act (FOIA) request seeking copies of ANR's July 23, 2009 filing and encouraging the Commission not to act further in this proceeding until it has had the opportunity to review ANR's filing or there is final action on its FOIA request.¹⁴

14. We will deny We Energies request that we delay action in this proceeding. We Energies state that they have not been able to obtain certain information filed by ANR in this proceeding under claim of privilege through the FOIA process. However, standard practice is for parties to contested proceedings to gain access to non-public information filed in those proceeding pursuant to protective agreements.¹⁵ We Energies does not allege that they made such a request to ANR that was denied.

15. Moreover, as is discussed below in the Protests section of this order, We Energies' opposition to this project has little to do with system flows or any potential for adverse impacts to their existing service. Rather, the crux of We Energies protest is under provision of Section 36 of ANR's tariff, ANR cannot proceed with this project until certain shippers, including We Energies, are given notice and the opportunity to transfer their existing primary receipt points to another location. And as discussed below, the Commission does not agree.

16. Several parties filed answers to other parties' pleadings. Although the Commission's rules of practice and procedure do not permit answers to protests or answers,¹⁶ the Commission may waive its procedural rules to accept such answers when

¹³ 18 C.F.R. § 388.112 (2009).

¹⁴ We Energies noted that its appeal of the denial of an earlier FOIA request for material filed by ANR in this proceeding was still pending.

¹⁵ See, e.g., *Bradwood Landing LLC*, 116 FERC ¶ 61,125 (2006); *Empire State Pipeline*, 115 FERC ¶ 61,113 (2006); and *PPL Montana*, 113 FERC ¶ 61,231 (2005).

¹⁶ See Rule 213 (a)(2). 18 C.F.R. § 385.213(a)(2). We note that a party may oppose motions filed by other parties. We Energies, Wisconsin Public Service, ANR, NSP, and Didion Ethanol, LLC (Didion) filed answers to various pleadings. NSP and

(continued...)

doing so will not unduly delay the proceeding or prejudice any party, and the answer will clarify the issues and assist the Commission in its decision-making.¹⁷ We find that the responsive pleadings in this proceeding provide information that will assist the Commission in its decision-making; therefore, we will accept the answers.

17. We Energies also moved to consolidate this proceeding with a Viking Gas Company (Viking) proceeding in Docket No. CP09-69-000 in which Viking proposed to construct facilities under its Part 157, subpart F, blanket construction certificate. We Energies contends that part of a transportation service for Northern States Power Co.-Minnesota (NSP) on Viking's proposed project is likely linked to service for NSP that ANR will provide for NSP on the Wisconsin 2009 Expansion Project and, thus, the two proceedings have issues of law and fact in common warranting consolidation. As discussed in our June 9, 2009 order authorizing Viking's proposal,¹⁸ we disagree that the proceedings need to be consolidated. As we have already acted on the Viking proposal, we will dismiss as moot We Energies motion to consolidate.

III. Discussion

18. The facilities ANR proposes to construct and operate will be used to transport natural gas in interstate commerce. Therefore, they are subject to the NGA and the Commission's jurisdiction.

A. Certificate Policy Statement

19. On September 15, 1999, the Commission issued a Certificate Policy Statement¹⁹ on the certification of new interstate natural gas pipeline facilities to provide guidance on how the Commission will evaluate proposals for new construction. In the Certificate Policy Statement, the Commission established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize

Didion, both shippers on the Wisconsin 2009 Expansion Project, support ANR's responses to the arguments raised by We Energies and Wisconsin Public Service, and they cite their need for the capacity that the project will provide.

¹⁷ See, e.g., *Florida Gas Transmission Co.*, 125 FERC ¶ 61,032 at P 3 n.3 (2008).

¹⁸ See *Viking Gas Transmission Co.*, 127 FERC ¶ 61,231 (2009).

¹⁹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,277, at 61,746 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

the construction of new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's 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 of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

20. Under the Certificate Policy Statement, the threshold requirement for applicants proposing new construction projects is that the applicant 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, existing pipelines in the market area and their captive customers, or landowners and communities affected by the route of a new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by 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 effects on economic interests will the Commission then proceed to complete the environmental analysis where other interests are considered.

21. ANR's proposal meets the Certificate Policy Statement's threshold requirement that a pipeline's existing customers should not subsidize a project for expansion shippers. ANR proposed to charge the expansion customers an incremental rate designed to recover the costs of the project. Thus, no existing customers will be responsible for such costs should there be a shortfall in revenues. In the discussion of the protests below, the Commission addresses and finds unpersuasive the protestors' contention that the existing Marshfield shippers will subsidize the Wisconsin 2009 Expansion Project because, they allege, a backhaul service for one shipper relies on the Marshfield shippers' continuing to flow gas in the opposite direction for the backhaul.

22. With regard to the other requirements of the Certificate Policy Statement, ANR is proposing the Wisconsin 2009 Expansion Project to meet new demand for natural gas; therefore, the project will have no impact on the existing services of competing pipelines. Accordingly, neither those pipelines nor their captive customers will be adversely affected.²⁰ Further, there will be no negative impacts on ANR's existing customers; existing customers will not subsidize the project and the quality of their current service will not be degraded by the project.

²⁰ The protestors' contention that the Marshfield shippers' service will be degraded or that they will be adversely affected by the project is discussed below.

23. ANR has designed its project to have a minimal impact on landowners or communities along the route. A portion of the proposed pipeline will be located in or adjacent to existing right-of-way and the upgrading of meters and control valves will take place within the existing boundaries of the meter stations involved. ANR will need to acquire some additional agricultural land for rights-of-way. As noted in the environmental analysis section of this order, ANR reached agreement with landowners regarding concerns they had raised about the project. There are no outstanding complaints from landowners.

24. For all of these reasons, we find that ANR's proposed Wisconsin 2009 Expansion Project meets the requirement of the Certificate Policy Statement and is required by the public convenience and necessity. To the extent there are any residual adverse effects stemming from this project, those effects will be outweighed by the benefits of the project which will meet growing demand for natural gas in Wisconsin.

B. Protests

1. Background: The Marshfield Flow Obligations

25. In their protests, We Energies and Wisconsin Public Service note that they are three of the five ANR customers known as the Marshfield shippers and that they hold 96.5 percent of the current Marshfield flow obligations. These obligations require the Marshfield shippers to flow gas from Viking's system into ANR's system upon ANR's request. We Energies states that it currently is obligated to flow 50,000 Dth/d at the Marshfield receipt point at any time ANR issues a must-flow order during the winter. We Energies states that it would prefer to use its capacity at the Joliet hub for those volumes, but that under the Marshfield Contracts, resulting from a 2004 settlement between ANR and the shippers, it may not change its primary receipt point associated with the 50,000 Dth/d unless the provisions of Section 36 of ANR's tariff are triggered. Wisconsin Public Service states that it is obligated under the Marshfield Contracts to flow 47,595 Dth/d from Viking's system to the Marshfield receipt point at ANR's request.

26. The Marshfield flow obligations arose in connection with ANR's restructuring under Order No. 636.²¹ In ANR's restructuring proceeding, it proposed to retain firm

²¹ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and*

capacity it held upstream on Viking's system for operational purposes as opposed to assigning that capacity to ANR's customers as required by Order No. 636. ANR asserted that certain minimum flow levels were required for gas entering its system from Viking at the Marshfield, Wisconsin receipt point to preserve ANR's system integrity. The Commission permitted ANR to retain the capacity on Viking for a two-year transition period after which the Commission required ANR to assign the Viking capacity to its customers.²²

27. Subsequently, ANR filed a petition requesting authority to re-acquire the capacity and, pursuant to a settlement in that proceeding, ANR was provided with another transition period ending on October 31, 2006. During the transition period ANR was to gradually reduce its reliance on the Viking deliveries and, if necessary, construct new facilities,²³ or make other arrangements with the Marshfield shippers, if minimum flow volumes were still required.²⁴ However, during that transition period, the parties continued negotiations with regard to the Marshfield shipper's remaining flow obligations and in October 2004, the parties reached another settlement, known as the Marshfield Settlement, resulting in the Marshfield Contracts, which continued to bind the Marshfield shippers to flow obligations upon ANR's request.²⁵ The remaining Marshfield Contracts, except one, expire at various times in 2010; the remaining contract expires in 2014.

remanded in part sub nom. United Distribution Cos. v. FERC, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

²² *ANR Pipeline Co.*, 62 FERC ¶ 62,079 (1993).

²³ ANR constructed its Northleg Expansion Project in 2006 which reduced ANR's dependence on the Marshfield receipts.

²⁴ *ANR Pipeline Co.*, 95 FERC ¶ 63,019 (2001). Negotiations between ANR and the Marshfield shippers have continued over the years on options for providing service to the Marshfield area when the Marshfield's shippers' contracts expire. If the contracts are not renewed, and the Marshfield shippers seek to source gas from other receipt points such as the Joliet point, then one option would be for ANR to reverse the flow of its pipeline entering the system at the Viking receipt point. That option would require ANR to construct additional facilities to allow more gas to flow from the Joliet receipt points to the Marshfield market. *See* ANR's October 3, 2008 Motion for Leave of ANR Pipeline Co. to File Answer and Answer to Protests at 4, 6 and 7.

²⁵ *ANR Pipeline Co.*, Docket No. RP05-69-000, (December 13, 2004) (Unpublished letter order).

28. The Marshfield shippers received certain rights as a result of the Marshfield Settlement, including the right to amend their contracts to remove all or a portion of the flow obligations and the right to move their primary receipt point for the volumes away from the Marshfield point under specified circumstances. Two ANR tariff provisions set out the circumstances under which a Marshfield shipper would be entitled to a reduction or the elimination of its obligation to flow gas from Viking's system into ANR's system at the Marshfield receipt point.

29. Specifically, Section 36 of the General Terms & Conditions of ANR's FERC Gas Tariff, entitled Marshfield Contracts, contains the two provisions set forth below, which the protestors claim are relevant to their concerns in this proceeding.

Section 36.2(A)(1)

If any contract having a winter MDQ sourced from points south and/or east of Transporter's Sandwich Compressor Station that have Primary Delivery Points within the Marshfield affected area terminates before the Marshfield Contracts terminate, then, prior to posting the availability of the capacity, Transporter will provide notice to the Marshfield Shippers of the contract termination and allow Marshfield Shippers to transfer Primary Receipt Point MDQ from Marshfield to any existing Receipt Point that is within the path of the terminating contract, unless such transfer is detrimental to existing firm service.²⁶

Section 36.2(A)(4)

If Transporter's Wisconsin system operations change whereby all or any portion of the Marshfield Contracts are no longer necessary to meet the obligations of the Viking settlement, Transporter will provide notice to the Marshfield Shippers of the operational change and allow the respective Marshfield Shippers to amend their contracts to a standard pro forma contract, including a change of

²⁶ The Marshfield Affected Area represents those markets that are physically served by gas sourced from the Marshfield receipt point and gas that is compressed and delivered through the Weyauwega compressor station.

the Primary Receipt Point MDQ from Marshfield to any existing Receipt Point on Transporter's system pursuant to these General Terms and Conditions.²⁷

2. The Protestors' Arguments

30. Wisconsin Public Service and We Energies contend that the two Section 36 tariff provisions have been triggered by the proposed project and by contract terminations and operational changes that occurred prior to ANR's proposing the project.

The Wisconsin 2009 Expansion Project

31. Wisconsin Public Service and We Energies argue that the proposed project will change flow conditions on ANR's system and thus constitute a change in operations for which ANR did not provide proper notice as required by Section 36.2(A)(4). We Energies points to the backhaul service that they believe ANR will provide for NSP²⁸ as an example of an operational change that will result from the project. We Energies and Wisconsin Public Service argue that the Commission should require ANR to comply with Section 36 of its tariff before proceeding with the project application.

32. The protestors also maintain that 50,000 Dth/d of capacity turned back by Wisconsin Public Service that ANR reserved for the Wisconsin 2009 Expansion Project should have been made available to the Marshfield shippers through the notice provisions of Section 36.2(A)(4). They assert that the turnback of this capacity represented an operational change that would have allowed the shippers to reduce their must-flow volumes by transferring them to other receipt points.

33. ANR disagrees that the 50,000 Dth of Wisconsin Public Service's turnback capacity constitutes an operational change under Section 36.2(A)(4). ANR states that the contracts for that 50,000 Dth have delivery points located outside the Marshfield area, noting that the contracts served delivery points at Green Bay and West Green Bay. ANR states that if contract terminations outside the Marshfield area constituted an operational change within the meaning of Section 32.2(A)(4), there would be no basis for limiting qualifying contract terminations under Section 32.2(A)(1) to those contracts that provide service to the Marshfield area.

²⁷ Wisconsin Public Service notes that the currently effective limitations on the Marshfield shippers are set forth both in Section 36 of ANR's tariff and in the Marshfield Term Sheet dated October 4, 2004, which reflects the terms of the settlement.

²⁸ NSP is listed as Xcel Energy Services Inc., its parent company, in the list of the expansion shippers in the application.

34. ANR also notes that it posted the availability of the 50,000 Dth of turnback capacity under Section 3.2 of its tariff and then made a capacity reservation posting as well. ANR points out that neither Wisconsin Public Service nor We Energies sought to have ANR construct facilities that, in conjunction with the turnback capacity, could have allowed them to reduce their Marshfield must-flow obligation.²⁹ ANR maintains that such failure to act demonstrates that neither Wisconsin Public Service nor We Energies believed that turned back capacity outside the Marshfield area could result in an operational change under Section 36.2(A)(4).

35. We Energies is skeptical that ANR would be able to meet both its winter service obligations in the Marshfield area and NSP's Wisconsin 2009 Expansion Project requirements absent receipts from the Marshfield shippers. We Energies argues that NSP's backhaul service will rely on the Marshfield shippers' continued flowing of gas in a southerly direction from the interconnect with Viking. Because the proposed backhaul service, which accounts for approximately two-thirds of the incremental load of the Wisconsin 2009 Expansion Project, requires a flow of gas in the opposite direction, the protestors assert that they and the other Marshfield shippers will subsidize the new shippers and that such subsidization is inconsistent with the threshold requirement of the Certificate Policy Statement. Further, they argue that if, because of the new project, the Marshfield shippers are unable to transfer volumes to a different receipt point on another part of ANR's system, they will be harmed because they will continue to have to pay for higher priced gas supplies.

36. The protestors emphasize that they must be afforded their rights to reduce or eliminate their flow obligations at Marshfield before the new project is implemented because after the change in ANR's operations, they will be unable to obtain these rights. Therefore, they disagree with ANR's position that the Commission should approve the Wisconsin 2009 Expansion Project and require the Marshfield shippers to pursue their requested relief in another forum.

²⁹ If the Marshfield shippers were able to move their receipt points to Joliet, as We Energies states it would like to do, additional facilities would need to be constructed in order to transport the additional volumes from Joliet to Wisconsin. *See* ANR's October 3, 2008 Motion for Leave of ANR Pipeline Co. to File Answer and Answer to Protests at 4, 6 and 7.

Commission Response

37. The protesting parties claim that the Wisconsin 2009 Expansion Project qualifies as an operational change subject to Section 36.2(A)(4). The Commission agrees that this is an operational change, but it is not one that is subject to the notice requirements of Section 36 of the tariff. For the notice requirements to be triggered, the operational change must be one “whereby all or any portion of the Marshfield Contracts are no longer necessary to meet the obligations of the Viking settlement.” That is not the case here because the project is not creating new capacity that would make it possible for the Marshfield shippers to transfer their volumes to other receipt points.³⁰

38. The Commission agrees with ANR’s interpretation of Section 36.2(A)(4) of its tariff with respect to the 50,000 Dth/d of turned back capacity. The capacity turned back by Wisconsin Public Service was on the path from Joliet to Green Bay and West Green Bay, neither of which can serve the Marshfield Affected Area. Therefore, ANR was not required to serve notice under Section 36 of the tariff.³¹

39. The Commission does not agree with the protestors that the Wisconsin 2009 Expansion Project is inconsistent with the Certificate Policy Statement. Services are frequently provided by backhaul and the fact that backhauls rely on forwardhauls in the opposite direction has never been viewed as subsidization under the Certificate Policy Statement. The subsidization of concern in the Certificate Policy Statement pertains to raising existing shippers’ rates to pay for an expansion, or allowing expansion shippers to unfairly benefit from cheap expansibility made possible by the existing facilities paid for by existing customers. In this case, ANR is charging incremental rates for the expansion shippers and no party is arguing that the costs of the facilities should be rolled into system rates to lower those rates. Therefore, the proposal meets the no subsidization threshold of the policy statement.

40. The protestors further contend that if ANR’s Wisconsin 2009 Expansion Project goes forward, they will have no remedy available to them in a complaint proceeding.

³⁰ If any of the Marshfield shippers wanted to subscribe to any capacity on the Wisconsin 2009 Expansion Project, including the 50,000 Dth of turned back capacity, they could have done so through ANR’s open season, as Wisconsin Public Service did.

³¹ We note that ANR posted the capacity as available on its Electronic Bulletin Board (EBB) on April 4, 2008 and June 27, 2008, and no shipper requested the capacity. ANR subsequently posted the capacity as reserved for use as part of the Wisconsin 2009 Expansion Project. Thus, on at least three separate dates, the protesting parties had an opportunity to contract for service if they wished to use that capacity but did not do so.

According to the protestors, the proposed backhaul service relies on the Marshfield shippers' continuing to flow gas south from the Viking interconnect into ANR's system at Marshfield. Thus, the parties contend, once the backhaul service begins, the remedy of moving their receipt point to access other gas sources will be foreclosed to them and they will be forced to remain subject to the must-flow obligation.

41. We disagree. ANR states that the backhaul service associated with the Wisconsin 2009 Expansion Project does not rely on the Marshfield shippers' continuing to flow gas in a southerly direction. ANR explains that whereas the Marshfield shippers' obligation to flow gas is in the winter, the expansion project shippers will require service throughout the entire year. Accordingly, ANR indicates that it designed the project so that it could change the direction of flows on the pipeline running to the Viking interconnect at Marshfield and perform the service on a forwardhaul basis. Thus, the initiation of backhaul service for NSP under the proposed expansion will not preclude the Marshfield shippers from seeking their desired remedy in a later complaint proceeding.

42. For all of these reasons the protests are denied.

Prior Contract Terminations and Operational Changes

43. The protestors state that while looking at the data related to ANR's system in connection with this proceeding, they concluded that it is likely that certain contracts for service unrelated to the Wisconsin 2009 Expansion Project terminated between 2004 and 2008 and that such terminations should have triggered the notice requirements of Section 36.2(A)(1) of ANR's tariff. Both protestors also state that after reviewing the flow diagrams provided by ANR it appears to them that ANR's system has undergone operational changes prior to the structuring of the Wisconsin 2009 Expansion Project.³² Therefore, according to We Energies, a significant portion of the transportation service under the Marshfield Contracts is no longer necessary to meet the obligations of the Marshfield Settlement. They state that ANR should have provided notice to the Marshfield shippers pursuant to Section 36.2(A)(4) that its system had undergone these operational changes and allowed the Marshfield Shippers to amend their contracts to a standard pro forma contract.

³² We Energies provides data developed by Gas Supply Consulting, Inc., an independent consulting firm, which it and other Marshfield shippers retained to analyze ANR's flow diagrams. We Energies states that Gas Supply Consulting, Inc.'s analysis supports its position that prior operational changes on ANR have occurred without ANR providing notice of such changes.

Commission Response

44. The Commission will not reach the issue of whether any transfers to other points or operational changes that were not associated with or the result of the proposed Wisconsin 2009 Expansion Project constitute contract terminations under the provisions of Section 36.2(A)(1) or operational changes under Section 36.2(A)(4). The Commission recognizes that the protestors only became aware of such transfers of volumes and possible operational changes while examining data related to the proposed project. However, the fact that the Wisconsin 2009 Expansion Project was the vehicle through which the information was gathered does not make these changes an issue in this certificate proceeding. In this proceeding, the Commission has determined the project is required by the public convenience and necessity. Allegations of past tariff violations are not relevant to that determination. The appropriate forum for making allegations that a pipeline may have violated its tariff or other rules and regulations not relevant to a specific certificate proceeding is a complaint proceeding.³³ Therefore, we will dismiss the protests that raise issues about alleged prior tariff violations without prejudice to the parties' filing a complaint.

C. Rates

45. The Commission will approve ANR's proposed incremental recourse rates for service performed on the project's facilities under Rate Schedules FTS-1 and ETS. Based on an estimated annual cost of service for the project of \$7,574,000, ANR proposed: (1) an FTS-1 reservation rate of \$6.202 per Dth and commodity rate of \$0.0075 per Dth; and (2) an ETS reservation rate of \$6.810 per Dth³⁴ and commodity rate of \$0.0075 per Dth. The proposed FTS and ETS service rates at a 100 percent load factor are \$0.2114 per Dth and \$0.2314 per Dth, respectively. These proposed rates are higher than the otherwise applicable recourse rates for such services in ANR's zone ML-7.³⁵

³³ NSP contends that before filing a complaint a party must call the Commission's hotline to see if the dispute can be settled. Our regulations, however, require a complaint to state whether the Commission's Hotline, Dispute Resolution Service, or other informal resolution procedures "were used, or why these procedures were not used." *See* C.F. R. § 385.206(b)(9)(i) (2009).

³⁴ Consistent with ANR's established rate design, the proposed ETS rate reflects the calculated FTS-1 rate plus ANR's currently effective mainline increment of \$0.608 for enhanced service.

³⁵ ANR's existing maximum recourse rates for FTS-1 and ETS service in the Northern Segment at a 100 percent load factor are approximately \$0.1472 per Dth and \$0.1672 per Dth, respectively.

Further, ANR believes that revenues for the project services will be less than costs for each of the first three years of service, and states that the project will not be fully subscribed until year five.

46. Consistent with Commission policy, the components of the \$7,574,000 cost of service underlying the proposed rates reflect the depreciation rate for mainline transmission facilities, the capital structure, and the rate of return approved in ANR's last general rate settlement in Docket No. RP94-43.³⁶ In addition, the proposed rates are based on the project's design determinants of 97,880 Dth/d. Because the project will not add compression to ANR's system, ANR proposes to apply the currently effective fuel use percentage for service within its ML-7 zone to transportation service on the proposed facilities. Also, ANR proposes to use its current ACA charges for the proposed services.

47. The Commission's regulations require pipelines to account separately for the construction costs of incrementally priced expansion capacity and to compare actual to projected costs in their NGA section 4 general rate proceedings.³⁷ As we stated in *Transcontinental Gas Pipe Line Corp.*,³⁸ this accounting will protect existing shippers from cost overruns and from subsidization that might result from under collection of the project's incremental cost of service, as well as help the Commission and parties to the rate proceedings determine the costs of the project. Such an accounting will allow the Commission to identify any material changes in circumstances that would warrant a re-examination of the rate treatment approved in the certificate proceeding in which the expansion project was approved.

48. ANR's application does not discuss the applicable rate for interruptible transportation services using the proposed expansion capacity. The Commission's open-access regulations require that jurisdictional pipelines that offer firm transportation service must also offer interruptible transportation service.³⁹ Accordingly, ANR must offer interruptible transportation service at those times when all of their reserved firm capacity is not being used.

49. Since the expansion capacity will be integrated into ANR's existing system, a project shipper's use of capacity will not be distinguishably assignable to either the existing or expansion facilities. Therefore, consistent with the Commission's action in

³⁶ *ANR Pipeline Co.*, 82 FERC ¶ 61,145 (1998).

³⁷ 18 C.F.R. § 154.309 (2009).

³⁸ *Transcontinental Gas Pipe Line Corp.*, 124 FERC ¶ 61,160, at P 26 (2008).

³⁹ 18 C.F.R. § 284.9(a) (2009).

Kern River Gas Transmission Co.,⁴⁰ ANR is directed to charge the otherwise applicable ML-7 zone rate for any interruptible service rendered on the additional capacity made available as a result of the expansion. Such rate should be stated in the tariff filing that ANR will be directed to make herein.

50. ANR has executed binding precedent agreements with six shippers for 91,440 Dth/day of the total 97,880 Dth/day of incremental firm capacity. Since ANR intends to charge negotiated rates for the new capacity, ANR must file either its negotiated rate contracts or numbered tariff sheets not less than thirty days and no more than sixty days prior to the commencement of service on the proposed expansion facilities. The tariff filing must state for each shipper the negotiated rate, all applicable charges, the applicable receipt and delivery points, the volume to be transported, the applicable rate schedule for the service, and a statement affirming that the affected service agreements do not deviate in any significant aspect from the form of service agreement in ANR's tariff. ANR is also required to disclose any other agreement, understanding, negotiation, or consideration associated with the negotiated agreements.

51. Issues regarding the allocation of costs and revenues between recourse rate shippers and negotiated rate shippers will be addressed in ANR's future section 4 rate proceedings.⁴¹ Thus, ANR is required to maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in sufficient detail such that in future section 4 rate cases the negotiated rate revenues can be identified in Statements G, I, and J, as provided in section 154.312 of the Commission's regulations.⁴² Any future section 4 rate cases must also include a separate cost and revenue study for the expansion project approved in

⁴⁰ *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077, at P 313-14, 326-328 (2006). See also *Gulf South Pipeline Company, LP*, 122 FERC ¶ 61,162, at P 17 (2008).

⁴¹ *Alternatives to Traditional Cost of Service Ratemaking for Natural Gas Pipelines, Regulation of Negotiated Transportation Service of Natural Gas Pipelines*, 74 FERC ¶ 61,076, at p. 61,242 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996); *petition for review denied, Burlington Resources Oil & Gas Co. v. FERC*, Nos. 96-1160, *et al.*, U.S. App Lexis 20697 (D.C. Cir. July 20, 1998). *Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003); *Order on Rehearing and Clarification*, 114 FERC ¶ 61,042 (2006); *Order Dismissing Rehearing Requests and Denying Requests for Clarification*, 114 FERC ¶ 61,304 (2006).

⁴² 18 C.F.R. § 154.312 (2009).

this proceeding as outlined in section 154.309 of the Commission's regulations,⁴³ and an update on the cost of service for the expansion services based on operational data, including the actual costs of the expansion.

IV. Environmental Analysis

52. On October 21, 2008, Commission staff issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Wisconsin 2009 Expansion Project and Request for Comments on Environmental Issues (NOI). Four substantive responses to the NOI were received including comment letters from the U.S. Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (Corps), Thomas Arndt (Arndt), and Mark and Tammy Stuckey (the Stuckeys).⁴⁴ The EPA requested cooperating agency status.

53. To satisfy the requirements of the National Environmental Policy Act, Commission environmental staff, in cooperation with the EPA, prepared an environmental assessment (EA) of ANR's proposal which was issued on May 15, 2009. The EA analyzed geology, soils, water resources, fisheries, wetlands, vegetation, wildlife, threatened and endangered species, cultural resources, land use, environmental justice, reliability, safety, cumulative impacts, and alternatives. The EA also addressed all substantive issues raised in the scoping comment letters.

54. The comments included one from Gary L. Dikkers, Airspace Manager of the Marshfield Municipal Airport (MFI) in Marshfield, Wisconsin regarding facility height restrictions pertinent to the Marshfield Meter Station. Mr. Dikkers filed subsequent comment letters clarifying that after discussion with ANR, his office has no objection to ANR's project. The Santee Sioux Nation also commented on the EA, specifying that it had no objection to the project and asking to be notified in the event of the discovery of resources of traditional significance to the tribe. As discussed in the EA and in accordance with its filed Unanticipated Discoveries Plan, ANR would provide the requested information to the appropriate tribes.

55. Additionally, the Commission received a comment letter from the U.S. Fish and Wildlife Service stating that it concurs with the EA's finding of no effect on federally listed endangered and threatened species.⁴⁵ ANR filed a comment letter in which it

⁴³ 18 C.F.R. § 154.309 (2009).

⁴⁴ As noted, a protest regarding the proposed pipeline route from the City of Janesville was subsequently withdrawn.

⁴⁵ Madison Gas and Electric Company filed a comment letter in support of ANR's Project.

provided an update of receipt of its project-related permits and consultations. As a result, recommendation number 7 set out in the EA is not listed in the Appendix to this order containing environmental conditions.

56. Based on the discussion in the EA, the Commission concludes that if the described facilities are constructed and operated in accordance with ANR's application and supplements, including responses to the staff's data request, and in compliance with the environmental conditions in the Appendix to this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

57. Additionally, we note that any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁴⁶

58. The Commission on its own motion, received and made a part of the record all evidence, including the application (s), as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to ANR pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations authorizing ANR to construct and operate pipeline facilities, as described more fully in this order and in the application.

(B) The certificate issued in Ordering Paragraph (A) is conditioned on the following:

1. ANR's compliance with all applicable Commission regulations under the Natural Gas Act, particularly the general terms and conditions set forth in paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations;

⁴⁶See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

2. ANR's completing the authorized construction of the proposed facilities and making them available for service within one year of the issuance of this order, in accordance with section 157.20(b) of the Commission's regulations;
3. ANR's filing of either its negotiated rate contracts or numbered tariff sheets not less than 30 days and no more than 60 days prior to the commencement of service on the proposed expansion facilities;
4. ANR's filing tariff sheets to include interruptible service in addition to FTS-1 and ETS service on the proposed expansion not less than 30 days and no more than 60 days prior to the commencement of service on the proposed expansion facilities.

(C) ANR's compliance with the environmental conditions set forth in the Appendix to this order.

(D) ANR shall notify the Commission's environmental staff by telephone, e-mail, or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies ANR. ANR shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(E) The protests related to whether the Wisconsin 2009 Expansion Project triggers Sections 36.2(A) (1) and (4) are denied, and the protests related to prior contractual terminations or operational changes are dismissed without prejudice to the filing of a complaint on these issues.

(F) The motion to intervene out-of-time is granted, the motion to consolidate proceedings is dismissed, and the motions for an evidentiary hearing and to delay action are denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Environmental Conditions

1. ANR shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the environmental assessment (EA), unless modified by the Order. ANR must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and,
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during activities associated with construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from Project construction and operation.
3. **Prior to any construction**, ANR shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI) and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. As **soon as they are available, and before the start of construction**, ANR shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

ANR's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. ANR's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. ANR shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by the Upland Erosion Control, Revegetation, and Maintenance Plan, minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of this certificate and before construction begins**, ANR shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP. ANR must file revisions to the plan as schedules change. The plan shall identify:
 - a. how ANR will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by this Order;

- b. how ANR will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
 - e. the training and instructions ANR will give to all personnel involved with construction and restoration (initial and refresher training) as the project progresses and personnel change;
 - f. the company personnel (if known) and specific portion of ANR's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) ANR will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the mitigation training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Beginning with the filing of its initial Implementation Plan, ANR shall file updated status reports with the Secretary on a **biweekly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on ANR's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to

- compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
- g. copies of any correspondence received by ANR from other federal, state, or local permitting agencies concerning instances of noncompliance, and ANR's response.
8. ANR shall employ at least one environmental inspector per construction spread. The environmental inspector shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by this Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (*see* condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
9. **Within 30 days of placing the certificated facilities in service**, ANR shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions ANR has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
10. ANR must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.