

121 FERC ¶ 61,292  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

December 21, 2007

In Reply Refer To:  
Docket Nos. RP07-99-000  
RP07-99-001

Greenberg Traurig  
800 Connecticut Avenue, NW  
Suite 500  
Washington, DC 20006  
Attention: Howard L. Nelson, Esq.  
Attorney for ANR Pipeline Company

Reference: Letter Order Approving Uncontested Settlement

Dear Mr. Nelson:

1. On December 1, 2006, ANR Pipeline Company (ANR) filed revised tariff sheets proposing an increase in the monthly charge paid by High Island Offshore System, L.L.C. (HIOS) for gas separation, dehydration, and related service paid by HIOS to ANR under Rate Schedule X-64. On December 27, 2006, the Commission issued an order accepting the tariff sheets submitted with ANR's December 1 filing, suspending their effectiveness to January 1, 2007, and setting the proceeding for hearing.<sup>1</sup> On March 5, 2007, the Commission denied rehearing of its December 27 Order.<sup>2</sup> On August 7, 2007, you submitted an offer of settlement (Settlement) on behalf of ANR in the above proceeding.

2. On August 14, 2007, comments supporting the Settlement were filed by HIOS and the Commission's Trial Staff. Reply comments were not filed. On September 11, 2007, the presiding administrative law judge certified the Settlement to the Commission as uncontested.

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<sup>1</sup> *ANR Pipeline Company*, 117 FERC ¶ 61,347 (2006) (December 27 Order).

<sup>2</sup> *ANR Pipeline Company*, 118 FERC ¶ 61,178 (2007).

3. The following is a summary of the major provisions of the Settlement:

Article I briefly describes the factual background and procedural history of this proceeding.

Article II describes the agreement reached with respect to the recovery of hurricane-related costs, as follows:

1. Section 2.1 specifies the amount of hurricane-related plant additions and operation and maintenance (O&M) expenses, less any insurance reimbursements received, that ANR will be permitted to recover through a deferral. The deferral period will be the earlier of the time the insurance reimbursements are known or two years from the approval of the Stipulation. In the event insurance reimbursements are not known until the two-year period expires, ANR will apply the percentage estimate provided by the insurer at such time to any unpaid claims, provided that that percentage shall not be less than 62.5 percent. At the end of the deferral period, ANR will file to recover in its next annual redetermination filing (1) the unreimbursed plant additions in rate base, and (2) the unreimbursed O&M expenses over a three-year amortization period.

2. Sections 2.2 and 2.3 provide that ANR will be permitted to receive carrying charges on the cost of service impact of the deferred plant additions, and on the deferred O&M expenses, and specifies the amounts of such annual carrying charges.

3. Section 2.4 states that, when ANR files to place the unreimbursed costs in rates, it will offset such amounts with any carrying charges paid by HIOS applicable to the insurance reimbursements received by ANR.

4. Section 2.5 provides that the parties can challenge the unreimbursed costs only on the grounds that they were not calculated in compliance with the offer, or that the filing is otherwise inconsistent with the offer.

5. Finally, section 2.6 precludes ANR from seeking to recover any additional 2006 or earlier Hurricane Rita related amounts, but reserves ANR's right to seek to recover Hurricane Rita related expenditures made after December 31, 2006.

Article III specifies the amount of non-hurricane related costs that ANR will include in HIOS's monthly charge in 2007, specifies the formula to be used to calculate administrative and general costs in future filings (subject to challenges to the application of such formula), and requires ANR to restate the depreciation rate applicable to the Grand Chenier facilities to reflect HIOS's remaining service life of 13 years.

Article IV specifies that the monthly charge under Rate Schedule X-64 for 2007 will be \$153,100, consisting of a base monthly service charge of \$140,000, and a monthly hurricane-related carrying charge of \$13,100.

Article V defines Consenting and Contesting Parties and governs the rights and obligations of Consenting Parties. This article provides that if the Commission does not approve the offer without material modification adverse to ANR and/or the Consenting Parties, then the Stipulation shall be deemed void.

Article VI sets forth the conditions precedent to the offer's becoming effective, provides for an effective date, provides for refunds, and provides that, if initial comments indicate that the offer is unopposed, ANR shall file a motion to place the settlement rates into effect as of July 1, 2007, subject to ANR's right to surcharge if the offer does not become effective.

Article VII provides that the offer is a privileged settlement offer under the Commission's rules, that its provisions are limited to the specific matters referred to therein, and that nothing in the offer shall be deemed to be a settled practice under applicable precedent.

Article VIII specifies that the term of the offer shall be from the effective date until all deferred hurricane-related costs have been collected by ANR.

Article IX contains miscellaneous provisions concerning dismissal of the instant proceeding as well as the appeal filed by HIOS, the non-severability of the offer's provisions and specifies that the *Mobile-Sierra* standard of review shall apply to modifications of the offer.<sup>3</sup>

4. The Commission finds that the settlement is fair, reasonable, and in the public interest and is hereby approved. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle of issue in this proceeding.

5. The request for rehearing of the Commission's December 27 Order, filed January 8, 2007, by HIOS is moot.

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<sup>3</sup> As a general matter, parties may bind the Commission to a public interest standard of review. *Northeast Utilities Co. v. FERC*, 993 F.2d 937, 960-62 (1<sup>st</sup> Cir. 1993). Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound. *Maine Public Utilities v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir., 2006). In this case, we find that the public interest standard should apply.

6. This letter terminates Docket Nos. RP07-99-000 and RP07-99-001.

By direction of the Commission. Commissioner's Kelly and Wellinghoff  
dissenting in part with separate statements  
attached.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

cc: All Parties

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

ANR Pipeline Company

Docket Nos. RP07-99-000  
RP07-99-001

(Issued December 21, 2007)

KELLY, Commissioner, *dissenting in part*:

The parties to this settlement agreement request that the *Mobile-Sierra* “public interest” standard of review apply to any future changes to the settlement that may be proposed by a party, a non-party or the Commission acting *sua sponte*. As I have explained in *Transcontinental Gas Pipe Line Corporation*,<sup>1</sup> I do not believe the Commission should approve a “public interest” standard of review provision, to the extent future changes are sought by a non-party or the Commission acting *sua sponte*, without an affirmative showing by the parties and reasoned analysis by the Commission as to the appropriateness of approving such a provision.

Accordingly, I dissent in part from this order.

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Suede G. Kelly

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<sup>1</sup> 117 FERC ¶ 61,232 (2006).

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

ANR Pipeline Company

Docket Nos. RP07-99-000  
and RP07-99-001

(Issued December 21, 2007)

WELLINGHOFF, Commissioner, dissenting in part:

The parties in this case have asked the Commission to apply the “public interest” standard of review when it considers any change to the Settlement that may be sought by the parties, a non-party, or the Commission acting *sua sponte*.

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,<sup>1</sup> I believe that it is inappropriate for the Commission to grant the parties’ request and agree to apply the “public interest” standard to future changes to the settlement sought by a non-party or the Commission acting *sua sponte*. In addition, for the reasons that I identified in *Southwestern Public Service Co.*,<sup>2</sup> I disagree with the Commission’s characterization in this order of case law on the applicability of the “public interest” standard.

For these reasons, I respectfully dissent in part.

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Jon Wellinghoff  
Commissioner

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<sup>1</sup> 117 FERC ¶ 61,055 (2006).

<sup>2</sup> 117 FERC ¶ 61,149 (2006).