



have gained access to non-public information filed by ANR in this proceeding by entering into a protective order. On October 29, 2009, the Commission responded to that portion of We Energies' rehearing request and directed ANR to enter into a protective agreement with We Energies and to provide We Energies access to certain non-public information it had requested.<sup>3</sup> ANR filed a request for rehearing of this directive.

3. On March 26, 2010, while rehearing of the August 24 Order was pending, We Energies and Wisconsin Public Service (Complainants) filed a complaint in Docket No. RP10-517-00 raising issues regarding ANR's alleged tariff violations that were dismissed without prejudice in the August 24 Order (Complaint).

4. This order addresses the remaining issues raised on rehearing of the August 24 Order, ANR's request for rehearing of the October 29 Order, and sets for hearing the Complaint filed in Docket No. RP10-517-000.

### **I. Background**

5. In its certificate application in this proceeding, ANR proposed to construct and operate approximately 8.9 miles of 30-inch pipeline to loop an existing lateral in Rock County, Wisconsin, and related facilities. The Wisconsin 2009 Expansion Project would increase ANR's firm capacity by approximately 97,880 dekatherms per day (Dth/d) in order to meet growing demand in Wisconsin. Following the close of an open season, ANR executed binding precedent agreements for total incremental capacity of 91,440 Dth/d. Northern States Power Company-Minnesota and Northern States Power Company-Wisconsin (jointly, NSP) subscribed to 75,000 Dth/d of the new capacity. Although no customer offered to turn back capacity during the open season, Wisconsin Public Service subsequently terminated contracts for 75,796 Dth/d used to serve Green Bay and West Green Bay. ANR reserved 50,000 Dth/d of the 75,796 Dth/d of turn back capacity for use in conjunction with the Wisconsin 2009 Expansion Project.

6. We Energies and Wisconsin Public Service filed protests to ANR's certificate application. They raised concerns regarding the project's impact on their status as Marshfield Shippers holding contracts subject to the Marshfield flow obligations set forth in Section 36 of the General Terms and Conditions (GT&C) of ANR's tariff.<sup>4</sup>

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requested that the July 23, 2009 filing be afforded privileged treatment pursuant to section 388.112 of the Commission regulations.

<sup>3</sup> *ANR Pipeline Co.*, 129 FERC ¶ 61,080 (2009) (October 29 Order).

<sup>4</sup> There are five Marshfield Shippers including the three protesting parties, Wisconsin Gas LLC, Wisconsin Electric Power Company, and Wisconsin Public Service.  
(continued)

7. The history of the Marshfield flow obligations is discussed at length in the August 24 Order, and will not be repeated here.<sup>5</sup> Briefly, the Marshfield flow obligations arose in connection with ANR's restructuring under Order No. 636.<sup>6</sup> The purpose of the Marshfield flow obligations is to ensure adequate flowing volumes at the Marshfield receipt point in Wood County, Wisconsin where ANR connects with the facilities of Viking Gas Transmission Company (Viking). The existing Marshfield flow obligations resulted from a 2004 settlement (Marshfield Settlement) between ANR and the Marshfield Shippers and the obligations of the parties are set forth in the term sheet attached to the settlement and in Section 36 of the GT&C of ANR's tariff.<sup>7</sup> In general, the Marshfield Shippers forego the right to change primary receipt points away from Marshfield and ANR has the right to issue a receipt point Operational Flow Order (OFO) under GT&C Section 8 at Marshfield during the winter period. However, Section 36.2(A) provides for movement of primary points away from Marshfield under certain conditions. The conditions relevant here are included in the following provisions:

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

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These protesting parties hold a total of 97,595 Dth/d of the current total 101,135 Dth/d of Marshfield obligations.

<sup>5</sup> August 24 Order at P 25-29.

<sup>6</sup> *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 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).

<sup>7</sup> The settlement was approved by the Commission on December 13, 2004. *ANR Pipeline Co.*, Docket No. RP05-69-000 (Dec. 13, 2004) (unpublished letter order).

any existing receipt point that is within the path of the terminating contract, unless such transfer is detrimental to existing firm service.<sup>8</sup>

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

Section 36.2(A)(5):

If a Shipper chooses to participate in a system expansion that provides incremental capacity from an alternative Receipt Point to replace Marshfield receipts.

8. The August 24 Order found that ANR's proposed project met the requirements of the Certificate Policy Statement<sup>9</sup> and authorized ANR to construct and operate the expansion project. The Commission dismissed certain of the protestors' claims that, as Marshfield Shippers, they would subsidize the expansion project and dismissed other claims regarding alleged tariff violations without prejudice to the protestors filing a complaint.

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<sup>8</sup> The Marshfield Affected Area represents those markets that are physically served by gas sourced from the Marshfield receipt points and gas that is compressed and delivered through the Weyauwega compressor station.

<sup>9</sup> *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).

## **II. The August 24 Order Authorizing the Wisconsin 2009 Expansion Project**

### **A. Procedural**

9. We Energies and Wisconsin Public Service filed requests for rehearing of the August 24 Order. ANR and NSP filed motions for leave to answer and answer to We Energies' request for rehearing. On March 5, 2010, We Energies filed supplemental comments to its rehearing request as provided for in the Commission's October 29 Order.<sup>10</sup> ANR filed reply comments to We Energies' supplemental comments. While our rules do not permit answers to requests for rehearing,<sup>11</sup> we may, for good cause shown, waive our rules.<sup>12</sup> We find good cause to do so in this instance because we find the answers provide information that assists us in the decision-making process. Accordingly, we will accept the answers of ANR and NSP and the reply comments of ANR.

### **B. Whether Expansion Service is Dependent on the Marshfield Flow Obligations**

10. The August 24 Order rejected the protestors' contention that the existing Marshfield Shippers will subsidize the Wisconsin 2009 Expansion Project because, according to the protestors, a backhaul service for one shipper (NSP) relies on the Marshfield Shippers continuing to flow gas in the opposite direction for the backhaul. The Commission found 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. The Commission cited ANR's explanation that the Marshfield Shippers' flow obligation applies only in the winter, while ANR designed the expansion facilities to change direction and flow gas on a forward haul basis to meet the expansion shippers' requirements throughout the year. The Commission also disagreed with the protestors' contention that if ANR's Wisconsin 2009 Expansion Project goes forward, they will have no remedy to address this issue in a complaint proceeding.

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<sup>10</sup> We Energies filed public and non-public versions of their supplemental comments.

<sup>11</sup> 18 C.F.R. § 385.713(d)(1) (2010).

<sup>12</sup> *See* 18 C.F.R. § 385.101(e) (2010).

## 1. Requests for Rehearing

11. We Energies claim that the finding in the August 24 order that there is no subsidy of the Wisconsin 2009 Expansion Project by the Marshfield Shippers is not supported. We Energies assert that the Marshfield Shippers are subsidizing the expansion because ANR could not provide the proposed backhaul service to NSP and concurrently meet its service obligations in the Marshfield Affected Area in the absence of the continuation of the Marshfield obligation. We Energies dispute the Commission's finding that the expansion facilities are designed to provide service to NSP by physically delivering gas from ANR to Viking. Rather, they assert that the only means of delivering gas to NSP is by displacing gas scheduled for delivery from Viking to ANR. In support, they assert that: (1) the Viking system is not configured to accept deliveries from ANR; and (2) ANR advised the Commission that it no longer plans to construct facilities at its Marshfield meter station which We Energies allege are necessary to configure ANR's system to accommodate the physical delivery of gas from ANR to Viking.

12. Similarly, Wisconsin Public Service takes issue with the Commission's finding that the expansion project's backhaul service to NSP would not adversely affect the Marshfield Shippers. Wisconsin Public Service questions how ANR could offer this service without the assurance of the Marshfield Shippers' obligation to maintain primary point capacity and to stand ready to flow gas at Marshfield. Wisconsin Public Service is concerned that ANR will force it to flow gas at Marshfield to support the project backhaul. Wisconsin Public Service contends that this would be an improper use of Section 36 of the GT&C. Moreover, if ANR were to trigger the Marshfield obligations to support the project backhaul service, Wisconsin Public Service states that an after-the-fact complaint is a poor remedy for addressing the burden of complying with the Marshfield obligation. For these reasons, Wisconsin Public Service requests that the Commission include, as part of ANR's certificate authority, a condition prohibiting it from supporting the project's backhaul service through imposing OFOs or other obligations on the Marshfield Shippers.

## 2. Answer

13. ANR disputes We Energies' assertion that ANR is not constructing the necessary facilities to configure ANR's system to accommodate the physical delivery of gas to Viking. According to ANR, We Energies confuses two different facilities. ANR explains that it has postponed the construction of additional metering facilities at the Marshfield city-gate necessary to accommodate deliveries to We Energies because We Energies determined not to participate in the project. However, ANR states that it is constructing bi-directional piping and control valves at the ANR compressor station at

Marshfield that, in combination with the remainder of the expansion facilities, will enable it to accommodate the physical flow of gas to the Viking interconnect.

### **3. Commission Determination**

14. We accept ANR's representation that as presently designed, the expansion facilities will enable ANR to provide incremental service to NSP by physically flowing gas from ANR to Viking. Thus, ANR can provide the incremental expansion service in the winter season without relying on the Marshfield Shippers flowing gas at the Marshfield receipt point. However, we agree with Wisconsin Public Service that if ANR were to invoke the Marshfield obligations to support the expansion service for NSP, that would be an improper use of Section 36 of ANR's tariff. The purpose of the Marshfield Settlement was to ensure service for existing customers, not additional incremental load. Thus, we will add a condition to ANR's certificate authorization in this proceeding to prohibit ANR from supporting the project's incremental services through imposing flow obligations on the Marshfield Shippers pursuant to Sections 36 and 8 of ANR's tariff.

#### **C. Whether ANR Has Violated Section 36 of Its Tariff Relating to the Marshfield Obligations**

15. The August 24 Order rejected the contentions of Wisconsin Public Service and We Energies that ANR's Section 36 tariff provisions relating to the Marshfield obligations have been triggered by the proposed project. The Commission held that the project is not creating new capacity that would make it possible for the Marshfield Shippers to transfer their volumes to other receipt points.<sup>13</sup> With respect to the 50,000 Dth/d of turned back capacity that was reserved by ANR for the project, the Commission found that the capacity turned back by Wisconsin Public Service was on the path from Joliet to Green Bay and West Green Bay, and that capacity could not serve the Marshfield Affected Area. Therefore, the Commission held that ANR was not required to serve notice under Section 36 of the tariff. The Commission also ruled that it would 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). Therefore, the Commission dismissed the protests that raised issues about alleged prior tariff violations without prejudice to the parties' filing a complaint.

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<sup>13</sup> The Commission also noted that: (1) if any of the Marshfield Shippers wanted to subscribe to any capacity on the Wisconsin 2009 Expansion Project they could have done so through ANR's open season (footnote 30); and (2) ANR posted the turn back capacity on at least three separate dates and the protesting parties had an opportunity to contract for this capacity if they wished to use that capacity but did not do so (footnote 31).

## 1. Rehearing Petitions

16. We Energies claim that the Commission erred by not conditioning the approval of the Wisconsin 2009 Expansion Project on allowing the Marshfield Shippers to change their primary receipt points from Marshfield, as they allege was permitted if ANR had complied with its tariff and settlement obligations. We Energies state that they submitted voluminous evidence related to system flows that directly relate to ANR's obligation under Section 36.2(A) of its tariff and calls into question whether the project can be constructed and operated consistent with those obligations and with the public interest. We Energies assert that the capacity associated with the changed flow conditions on ANR's system total at least 85,000 Dth/d and that this capacity is incorporated into the expansion project.<sup>14</sup> Rather than supporting the project expansion, We Energies assert that this capacity should be the basis for the termination or reduction of the Marshfield obligations. Moreover, We Energies claim that the Commission's unconditional approval is inconsistent with previous certificate orders in which the Commission has conditioned its approval on the pipeline mitigating operational problems created by the proposed project for existing shippers.<sup>15</sup>

17. We Energies also claim that the Commission, without adequate support, accepted ANR's claim that the 50,000 Dth/d of the Green Bay area turn back capacity was not subject to the notice requirements of Section 36.2(A) of ANR's tariff because it could not be used to serve the Marshfield Affected Area. We Energies claim that the Commission erred by failing to address whether the combination of this capacity along with other operational flow conditions that now exist on ANR's system do create the operational flow change condition that is intended under Section 36.2(A)(4) of ANR's tariff that would allow the Marshfield Shippers to change receipt points from Marshfield to other receipt points on ANR's system.

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<sup>14</sup> We Energies' position was based on a steady-state model contained in Exhibit G to ANR's certificate application. A steady-state model takes a snap-shot in time for a defined set of conditions. However, pipeline operating conditions are dynamic and can change year-by-year, season-by-season, day-by-day, hour-by-hour, or even minute-by-minute. Transient models take into account these variables that change over time. *See El Paso Natural Gas Co.*, 104 FERC ¶ 61,045, at P 77 (2003).

<sup>15</sup> We Energies' Request for Rehearing at 15 (*citing Dominion Cove Point, L.P.*, 125 FERC ¶ 61,018 (2008) (*Dominion Cove Point*) (order on remand conditioning expansion of LNG facilities on volume limitations at a pipeline interconnection)); *Colorado Interstate Gas Co.*, 94 FERC ¶ 61,382 (2001) (*CIG*) (finding that construction of additional facilities to ensure proper blending of gas is necessary to avoid adverse impacts of an expansion).

18. To the extent that the Commission fails to address We Energies' claim in the certificate proceeding, We Energies assert that the Commission must clarify that We Energies will be able to obtain full and complete relief in a complaint proceeding. We Energies also request that the Commission reverse the portion of the August 24 Order that found that the 50,000 Dth/d of turned back capacity cannot serve the Marshfield Affected Area which it claims prejudices issues to be raised in such a complaint.

19. In their supplemental comments, We Energies maintain that their analysis using data from ANR's transient model confirms their position that operational changes within the meaning of Section 36.2(A)(4) of the tariff occurred on ANR's system that would enable the Marshfield Shippers to move their receipt points away from Marshfield. However, We Energies refine their position regarding the amount of receipt point capacity that they claim could have been transferred by the Marshfield Shippers away from Marshfield. Among other things, We Energies now claim that ANR could have transferred 45,000 Dth/d from Marshfield without any system modification, or transferred 75,447 Dth/d from Marshfield if it installed flow control valves at the Marshfield Compressor station.<sup>16</sup> Even assuming that ANR had no responsibility to construct facilities or to notify We Energies of such a possibility, We Energies state that the Marshfield Settlement provides shippers with the right to request build-out cost data that would be required to reduce the capacity of a Marshfield Contract. We Energies conclude that not only was a considerable amount of available capacity diverted to the expansion project, but We Energies' cost to exercise their contractual right to the build-out option to significantly or completely eliminate the Marshfield obligation will substantially increase.

20. Wisconsin Public Service requests that the Commission clarify its conclusions about the turn back capacity and the scope of Section 36.2(A)(4). If the Commission concludes that the specific turn back of 50,000 Dth/d did not require notice under Section 36.2(A)(4), Wisconsin Public Service states it disagrees, but does not seek rehearing. If however, the Commission is concluding that a change that occurs outside the area, such as a contract turn back with a path that does not begin, traverse, or end in the Marshfield Affected Area, cannot trigger Section 36.2(A)(4), Wisconsin Public Service disagrees and seeks rehearing. Wisconsin Public Service asserts that while Section 36.2(A)(1) expressly defines rights that are expressly tied to changes involving points in the Marshfield Affected Area, Section 36.2(A)(4) includes no such limitation and more generally encompasses system changes.

21. Wisconsin Public Service also requests that the Commission clarify that its statements in footnotes 30 and 31 of the August 24 Order that note that the protestors had

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<sup>16</sup> This information was redacted in We Energies' supplemental comments but included as public information in ANR's reply comments. ANR's Reply Comments at 2.

an opportunity to subscribe to the project or bid on the capacity turned back by Wisconsin Public Service do not bear on its interpretation of Section 36.2(A)(4) and are not relevant to whether ANR met its Section 36 obligations. Alternatively, it requests rehearing. According to Wisconsin Public Service, whether a Marshfield Shipper subscribed for the project or bid on the turned back capacity is unrelated to the scope of Section 36.2(A)(4) of ANR's tariff.

## 2. Answers

22. ANR disputes the petitioners' assertion that a contractual change outside the Marshfield Affected Area is a "system operational change" within the meaning of Section 36.2(A)(4) that would give rise to an obligation to notify Marshfield Shippers that they can change their receipt points. ANR claims that contractual changes, and those specifically limited to contract terminations within the Marshfield Affected Area, are addressed in Section 36.2(A)(1). According to ANR, if contract terminations outside the Marshfield Affected Area were intended to constitute an operational change under Section 36.2(A)(4), there would be no reason to limit qualifying contract terminations under Section 36.2(A)(1) to those with delivery points inside the Marshfield Affected Area. ANR claims that a system operational change pursuant to Section 36.2(A)(4) of the tariff connotes changes to its system resulting from facility additions or modifications that, for example, increase overall capacity or pipeline or compressor efficiencies.

23. With respect to the models relied upon in We Energies' supplemental comments, ANR agrees that some capacity could have been transferred from Marshfield if the turned back capacity were devoted to the Marshfield Shippers instead of the expansion shippers, but notes there is not a one-for-one relationship. For example, it points out that in Model Request No. 2, ANR would have had to use 50,000 Dth of available capacity to allow a transfer of 45,000 Dth of receipt point capacity from Marshfield based on the flows that could have been achieved at the time these transient model runs were performed. ANR also points out that the amount of capacity that would be stranded at any time if Marshfield Shippers were permitted to move their receipt point away from Marshfield would change depending on the demands placed on the system at such time. According to ANR, the absence of a one-for-one relationship further explains why the Marshfield Settlement allows only contract terminations inside the Marshfield Affected Area to trigger the transfer of receipt point obligations from Marshfield.

24. On the issue of the build-out option, ANR states that even if the Marshfield Shippers were entitled to use the turned back capacity, there is nothing in the tariff that requires ANR to continually study what facilities would be required to allow them to move their receipt point capacity and continually notify the Marshfield Shippers of the cost of a build-out option.

25. NSP maintains that We Energies have not shown that it is necessary or appropriate for service to the expansion shippers to be disrupted. NSP asserts that the Commission

correctly held that construction of the expansion facilities will not preclude We Energies from seeking their desired remedy in a complaint proceeding.

### **3. Commission Determination**

26. In the August 24 Order, the Commission addressed the protestors' claim that the 50,000 Dth/d of capacity turned back by Wisconsin Public Service that ANR reserved for the expansion project should have been made available to the Marshfield Shippers through the notice provisions of Section 36.2(A). However, the Commission also stated that it would not reach the issue of whether any transfers to other points or operational changes 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). These issues were dismissed without prejudice to the parties filing a complaint.

27. The language of Section 36.2(A)(4), quoted above, describes two requirements that must be met to trigger ANR's notice obligation. First, ANR's Wisconsin system operations must change, and second, the change must render all or a portion of the Marshfield Contracts no longer necessary to meet the obligations of the Viking settlement. In addressing the protestors' claim that the 50,000 Dth/d of turn back capacity should be assigned to the Marshfield Shippers under the provisions of Section 36.2(A)(4) of ANR's tariff, we examined the information filed by ANR in this proceeding, including the transient model, and determined that ANR could not flow 50,000 Dth/d to Marshfield without additional facilities. We concluded only that the Marshfield Shippers could not use this turn back capacity to move 50,000 Dth/d of their receipt point capacity from Marshfield. We affirm our conclusion<sup>17</sup> but clarify that our ruling regarding the turn back capacity in paragraph 38 of the August 24 Order was limited to this discrete issue.<sup>18</sup> We did not address other issues raised by the parties, including whether a contractual change outside the Marshfield Affected Area could result in a "system operations change" under Section 36.2(A)(4) of ANR's tariff. We also did not address whether some portion of the 50,000 Dth/d could flow to Marshfield without additional facilities, an issue We Energies now raise in their supplemental comments.

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<sup>17</sup> Wisconsin Public Service does not seek rehearing on this issue. Based on data obtained from the transient model, We Energies now claim in supplemental comments that ANR could have transferred 45,000 Dth/d (not 50,000 Dth/d) from Marshfield without any system modification. *See* ANR's Reply Comments at 2.

<sup>18</sup> The August 24 Order also found that the expansion project is not creating new capacity that would make it possible for the Marshfield Shippers to transfer their volumes to other receipt points. Although We Energies assert that no party argued this position, they do not challenge this finding.

28. In response to the request of Wisconsin Public Service, we clarify that whether the Marshfield Shippers contracted for expansion capacity or bid on the turn back capacity is not relevant to the limited issue we addressed in the certificate proceeding. Whether this issue is relevant to other claims regarding whether ANR has violated Section 36.2 of the tariff should be addressed in the complaint proceeding discussed in section IV below.

29. Although We Energies would prefer that we rule on the unresolved issues regarding whether ANR has violated Section 36 of its tariff in this proceeding, we find that these issues are best resolved in the complaint proceeding. The Wisconsin 2009 Expansion Project is projected to go in service in the fall of 2010 and it would be detrimental to the shippers who have contracted for the expansion service to delay the project at this stage. The issues raised by the parties are contentious and will likely take a protracted amount of time to resolve. We also disagree with We Energies that our action here is inconsistent with the Commission's conditional approval in *Dominion Cove Point* and *CIG*. In those cases, the Commission conditioned approval on the pipelines mitigating operational problems created by the proposed project for existing customers. In contrast, the issues raised here involve alleged tariff violations. The Commission has ample authority under section 5 of the NGA to require an appropriate remedy in the complaint proceeding, if ANR is found to be in violation of its tariff.

### **III. The October 29 Order Directing Parties to Enter into Protective Agreement**

30. The October 29 Order directed ANR to enter into a protective agreement with We Energies to provide We Energies with access to non-public information it sought from ANR. On November 3, 2009, the Chief Judge appointed Judge John P. Dring as Settlement Judge in order to assist the parties in drafting a protective agreement. At a settlement conference held on November 4, 2009, the parties were able to negotiate the terms of a protective agreement that was filed on November 9, 2009, in accordance with the Commission's order. The protective agreement provided that ANR would provide to We Energies output data from the transient model that was filed by ANR in this proceeding on July 23, 2009.

#### **A. Procedural**

31. On November 25, 2009, ANR filed a request for rehearing of the October 29 Order in this proceeding. We Energies filed a motion for leave to file an answer and answer to the rehearing request and ANR filed an answer in opposition to We Energies' motion. Answers to requests for rehearing are prohibited under Rule 713(d)(1) of the Commission's Rules of Practice and Procedure<sup>19</sup> and We Energies has not

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<sup>19</sup> 18 C.F.R. § 385.713(d)(1) (2010).

established any need for an exception to this rule. Accordingly, we reject We Energies' answer to ANR's request for rehearing. ANR's subsequent pleading is dismissed as moot.

**B. Request for Rehearing**

32. On rehearing, ANR asserts that the Commission erred by requiring ANR to provide information regarding its pipeline's transient model and data that it previously found could cause competitive harm to ANR, which information is neither relevant nor needed to resolve the issues in this proceeding. ANR asserts that We Energies' protest should be resolved on the basis of the language in the relevant provisions of ANR's tariff, and that the flow patterns on its system that are produced by ANR's transient model are not needed to interpret the parties' rights and obligations under those provisions. ANR also asserts that the Commission erred by requiring ANR to produce the information in 10 days even if no agreement on a protective order can be reached. Thus, ANR asserts that it should not have been required to disclose its transient model and data because there was no reason for We Energies to have access to this proprietary and confidential data.

**C. Commission Determination**

33. The Commission directed the parties to enter into a protective agreement in order to provide We Energies with access to confidential information in this proceeding in a manner that would adequately safeguard ANR's interest.<sup>20</sup> Contrary to ANR's assertions, the confidential information it provided to We Energies was relevant to the issues in this proceeding. The Commission used data from ANR's transient model to verify that its proposed service could be provided regardless of whether existing customers would be flowing gas at Marshfield.<sup>21</sup> In addition, as explained *supra* in P 27, the Commission also relied in part on data from the transient model to address the issue raised by We Energies of whether the turn back capacity ANR used for its expansion could have been used to flow 50,000 Dth/d to Marshfield without additional facilities.

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<sup>20</sup> Contrary to ANR's claim, there is no conflict between the Commission's order denying We Energies' FOIA request and its October 29 Order requiring the parties to enter into a protective agreement. The Commission's action on the FOIA request determined that the information related to ANR's transient model and data was confidential and should not be released to the public. In contrast, the purpose of the protective agreement was to provide We Energies access to this confidential information for purpose of its participation in this proceeding, in a manner that would limit any competitive harm to ANR.

<sup>21</sup> *See supra* at P 14.

Accordingly, it was appropriate for We Energies to have access to information used by the Commission in reaching its conclusions. Further, since ANR entered into the protective agreement with We Energies and provided them with the information within the Commission's 10-day time limit, ANR's concern that it would be required to produce the information without a protective agreement is moot. Under these circumstances, we find that ANR's assertion that it was aggrieved by the Commission's October 29 Order is without merit and its request for rehearing is denied.

#### **IV. Complaint in Docket No. RP10-517-000**

34. On March 26, 2010, Complainants, who were the protesters in the certificate proceeding, filed the Complaint, and on April 15, 2010, ANR filed an Answer. On April 29, 2010, Complainants filed a Motion for Leave to File an Answer and an Answer, and on May 10, 2010, ANR filed an answer to the Motion and a Response to Complainants' Answer.<sup>22</sup> The discussion in the rehearing section bears upon some of the issues raised in the Complaint. Because the Commission is setting all issues raised by the Complaint for hearing, these are not discussed in detail here.

35. The Complaint sets forth its description of the certificate proceeding stating that in that proceeding the protesters raised concerns about ANR's failure to comply with the notice requirements in the Marshfield Settlement and in ANR's tariff.

36. Complainants state that consistent with the August 24 Order, they filed the instant Complaint. The Complaint asserts that contrary to the requirements of the Marshfield Settlement and GT&C Section 36.2(A),<sup>23</sup> ANR failed to provide notice to the Marshfield Shippers of operational changes and certain contract terminations on its system that would have permitted the Marshfield Shippers to reduce their obligation to contract for capacity and comply with must flow orders at the Marshfield receipt point. Moreover, Complainants argue that Section 36.2(A) of ANR's tariff was created as a temporary fix for ANR's upstream capacity problems at the time of its restructuring under Order No. 636, and this fix is still in place nearly 18 years after Order No. 636 was adopted. In addition, the Complaint asserts that ANR's conduct based on its interpretation of these provisions has rendered this portion of its tariff unjust, unreasonable and unduly discriminatory.

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<sup>22</sup> The Commission's regulations at section 385.213(a)(2) limit pleadings after the answer unless otherwise authorized (18 C.F.R. § 385.213(a)(2) (2010)). Since we are setting the complaint for hearing we shall not consider the supplemental pleadings here, but allow them to be raised at hearing for full consideration by the presiding judge.

<sup>23</sup>The relevant portions of that section are set forth *supra*, P 7.

37. Accordingly, the Complaint requests the Commission to relieve Complainants of their Marshfield obligations by allowing them the opportunity to convert at least 91,080 Dth/day of the service MDQ under their Marshfield Resolution Contracts to pro forma contracts, including changing primary points of receipt from Marshfield to points on ANR's system within the Joliet Hub area or to other points on ANR's system from which there is a path of available capacity, at no cost to the Marshfield Shippers.

**A. ANR's Answer**

38. ANR asserts that none of the events Complainants rely upon allow a Marshfield Shipper, pursuant to the Marshfield Settlement, to change its receipt point through the Section 36.2(A) trigger.

39. ANR objects to the relief that Complainants seek: an order requiring ANR to allow them to transfer 91,080 Dth/d of their primary receipt point obligation from Marshfield to points within the Joliet Hub or other areas with available capacity at "no cost" to the Marshfield Shippers. ANR asserts that would require the construction of capacity which, if provided to the Marshfield Shippers at no cost to them, would have to be paid for by other shippers.

40. ANR insists that the Complainants' assumptions and legal justifications are flawed. In any event, ANR continues, regardless of what amount of certain turn back capacity<sup>24</sup> could flow to the Marshfield Affected Area, there has not been any operational change on ANR's system falling within Section 36.2(A)(4) that would allow Marshfield Shippers to move their receipt point capacity from Marshfield.

41. As to whether the Marshfield Settlement was intended to be only a temporary solution, ANR responds that whatever the intent, the cost of a permanent resolution (i.e., the construction of facilities) has always been the responsibility of the Marshfield Shippers, not ANR or ANR's other shippers.

**B. Discussion**

42. The Complaint raises the central question whether the Marshfield Shippers, pursuant to the 2004 Marshfield Settlement, should have received the notice provided in Section 36.2(A) of ANR's tariff to allow them to reduce their Marshfield obligation. From this arise a multitude of subsidiary issues and arguments.

43. ANR asserts that the Commission rejected certain of the Complaint's contentions in the August 24 Order, citing P 38. However, as clarified in this order, all that the August 24 Order determined was that based upon the information available to the

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<sup>24</sup>The turn back capacity is discussed in Part II C. of the rehearing section, *supra*.

Commission at that time, the Commission agreed that ANR could not flow certain turn back capacity to Marshfield without additional facilities. Thus, the August 24 Order did not address whether some portion of the turn back capacity could flow to Marshfield without additional facilities, nor did it address the issue of whether a contractual change outside the Marshfield Affected Area could result in a “system operations change” under Section 36.2(A)(4) of ANR’s tariff. The Complaint raises these and other issues, in addition to alleged tariff violations which the August 24 Order stated should be addressed in a complaint proceeding, which has now been initiated.

44. The existing record in this proceeding is insufficient to allow the Commission to make a reasoned decision on the issues that have been raised by the Complaint. Accordingly, the Commission will set all issues raised by the Complaint for hearing.<sup>25</sup> The presiding administrative law judge (ALJ) may make a recommendation as to a remedy, if appropriate, at the conclusion of the hearing.

The Commission orders:

(A) The requests for rehearing and clarification of the August 24 Order are granted in part, and denied in part, as discussed in the text of this order.

(B) The August 24 Order is amended by the insertion of a new Ordering Paragraph (G) which provides as follows: ANR is prohibited from supporting the project’s incremental services through imposing flow obligations on the Marshfield Shippers pursuant to Sections 36 and 8 of ANR’s tariff.

(C) ANR’s request for rehearing of the October 29 Order is denied.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the NGA, particularly sections 4, 5, 8, and 16 thereof, and pursuant to the Commission’s Rules of Practice and Procedure and the regulations under the NGA, a public hearing shall be held concerning the issues raised by the Complaint in Docket No. RP10-517-000.

(E) The presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the presiding judge’s designation, convene a pre-hearing conference

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<sup>25</sup> Although the Commission is not directing this matter to a settlement judge at this time, the Commission consistently encourages parties to settle disputed issues to avoid the burden and expense of a hearing. In particular, this proceeding may especially benefit from a prompt settlement of the issues before the Wisconsin 2009 Expansion Project is in operation.

in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) The Commission directs the ALJ to issue an initial decision in this proceeding within 12 months of the commencement of the hearing procedures.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.