

107 FERC ¶ 61,250
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ANR Pipeline Company

Docket No. CP04-1-000

ORDER ISSUING CERTIFICATE AND DENYING PROTEST

(Issued June 2, 2004)

1. On October 1, 2003, ANR Pipeline Company (ANR) filed an application under section 7 (c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations requesting certificate authorization to add a new compressor unit to its existing Weyauwega Compressor Station in Waupaca County, Wisconsin. ANR states that by increasing compression it will be able to provide more reliable deliveries of additional volumes of competitively priced domestic gas to customers currently receiving gas supplied from Canada.

2. We find that approval of ANR's proposal is in the public interest because it will provide ANR with enhanced flexibility and reliability in meeting its customers' demands. Accordingly, we will grant ANR's request to add compression, as discussed, modified, and conditioned in this order.

I. BACKGROUND AND PROPOSAL

3. ANR, a subsidiary of El Paso Corporation, operates approximately 10,600 miles of interstate pipelines that extend from producing areas in Texas, Oklahoma, and the Gulf of Mexico north to Wisconsin, Michigan, and the Canadian border. At issue here are ANR facilities located in Wisconsin. ANR transports gas to meet its Wisconsin customers' needs by: (1) bringing domestic gas up from producing areas in the Gulf of Mexico and Southwest through ANR's large interstate mainlines, (2) relying on Viking Gas Transmission Company (Viking) to bring Canadian gas down to an interconnection with ANR at Marshfield, Wisconsin, and (3) obtaining Canadian supplies from Great Lakes Gas Transmission Company at Fortune Lake, Michigan.

4. ANR held firm transportation capacity on Viking prior to Order No. 636 restructuring, in order to support deliveries to ANR customers in Wisconsin. Upon implementation of Order No. 636, ANR was required to assign capacity it held on Viking to its former sales customers. ANR states that the loss of the right to hold and control capacity on Viking rendered it unable to fulfill all of its firm transportation obligations.

5. To enable ANR to continue to provide firm service to existing customers, ANR, Viking, and certain customers with firm transportation capacity on Viking entered into a settlement agreement in 2001.¹ The agreement permits ANR to call on customers with flowing volumes on Viking to deliver gas to ANR at the Marshfield interconnect. This agreement is a temporary arrangement through 2006, intended as a means to meet existing customer demand during the time it takes ANR to build new facilities to boost capacity to fulfill customer commitments without relying on receipts from Viking at Marshfield.

6. ANR states that its proposed NorthLeg Project, by adding compression at Weyauwega, will reduce its need to rely on volumes received from Viking at Marshfield by 107,217 dekatherms per day. ANR expects that the proposed additional compression will enhance reliability and flexibility on its system and allow it to overcome system constraints and diminish its need to rely on operational flow orders. ANR comments that Canadian gas supplies, at times, have proved to be more expensive than domestic gas sources, and stresses that adding new compression should enable customers reliant on Canadian supplies to obtain domestic supplies instead.

7. The proposed compressor unit will run on electric power. Because ANR's tariff does not now provide for the recovery of electric power costs (ANR's existing compressors are all gas-fired), ANR proposes to modify its tariff to track and recover these costs. ANR notes the new electric power cost recovery mechanism will match the annual filings requirement and three year averaging methodology of its current gas tracking mechanism. ANR states that shippers will not be assessed a surcharge to recover electric power costs during the first year in which the electric compressor is in service.² The proposed electric power cost recovery method is a deferred cost recovery mechanism,

¹ANR, 95 FERC ¶ 63,019 (2001) (Certification of Uncontested Offer of Settlement) and 95 FERC ¶ 61,456 (2001) (Letter Order Approving Settlement).

²ANR's December 8, 2003 Data Response, at 8.

so year one costs will be recovered in year two, year two costs in year three, etc. ANR adds that the electric power cost recovery is a new mechanism and three years of actual electric costs will not have been incurred when the first and second electric power cost surcharge rate is calculated. Therefore, ANR states that it will estimate annual electric power costs (not to exceed \$350,000 per year) where actual electric costs have not been incurred.

8. ANR estimates the proposed project will cost approximately \$13,519,310. ANR requests rolled-in rate treatment for the project costs. ANR claims the project will benefit existing customers by ameliorating capacity constraints, reducing reliance on Marshfield receipts, and improving service reliability and flexibility. ANR proposes an in-service date of November 1, 2005.

II. NOTICE AND INTERVENTIONS

9. Notice of ANR's application was published in the Federal Register on November 17, 2003.³ Timely unopposed motions to intervene were filed by Calpine Corporation; Proliance Energy, LLC; Wisconsin Public Service Corporation; MichCon Gas Company; PSEG Energy Resources & Trade LLC; City Gas Company; Alliant-Wisconsin Power & Light Company; Madison Gas & Electric Company; Rochester Gas & Electric Company; East Ohio Gas Company d/b/a Dominion East Ohio; SEMCO Energy Gas Company; Viking; and the Wisconsin Distributor Group.

10. Untimely motions to intervene have been filed by Aquila, Inc. d/b/a Aquila Networks; Northern Natural Gas Company; and Wisconsin Electric Power Company jointly with Wisconsin Gas Company. We will grant the motions to intervene out-of-time, as we find that to do so will not delay, disrupt, or otherwise prejudice this proceeding or the parties to this proceeding.

³68 FR 64868 (2004).

III. PROTEST

A. Viking's Objections to ANR's Proposal

11. Viking submitted a protest to ANR's proposal, to which ANR filed an answer.⁴ Viking states that ANR's proposed NorthLeg project may diminish, but will not end, ANR's reliance on volumes received from Viking at Marshfield. Viking notes ANR's observation that even after adding compression, ANR may require primary receipts at Marshfield to increase firm flow capabilities to the area of ANR's system that depend on volumes Viking brings to Marshfield.

12. Viking emphasizes that the settlement agreement permits ANR to require certain shippers to deliver flowing volumes off Viking at Marshfield during the transition time given for ANR to build new capacity, but alleges that ANR has not made full use of this provision of the settlement agreement. In view of ANR's decision not to exercise its settlement rights to take volumes at Marshfield, Viking challenges ANR's purported need to add compression to increase capacity to replace its Marshfield receipts. As an alternative to the proposed NorthLeg Project, Viking suggests "negotiating a commercial solution with ANR and the other affected parties."

13. Viking questions ANR's proposal to institute a charge to recover electric power costs for the new compressor. Viking points out that even with the new compression, customers transporting gas to Marshfield via Viking will continue to provide an essential service to ANR, as ANR will continue to rely on Marshfield receipts for operational purposes. Because shippers using the Marshfield interconnect do not require any new compression to effect existing service, and because the volumes delivered to Marshfield diminish ANR's need for additional compression, Viking argues that shippers bringing gas to Marshfield should not be assessed any costs associated with building or operating the proposed compressor. Viking views such costs as artificially inflating the overall cost to transport gas on its system, thereby impairing its ability to compete with ANR to serve the Wisconsin market.

B. ANR's Answer to Viking's Protest

⁴Section 385.213(a)(2) of our Rules of Practice and Procedure does not permit answers to protests. However, we may waive this rule for good cause shown, and do so in this instance to help clarify the issues under consideration.

14. ANR rejects Viking's proposal to seek a "commercial solution," on the grounds that it was, in part, earlier unsuccessful efforts to seek just such a solution that led to the settlement agreement. ANR maintains its past practices and project proposal are consistent with the settlement agreement. The settlement anticipates new facilities will need to be built by ANR (or by Viking, or by both) prior to 2006 in order to enable ANR to fulfill firm, long-term customer commitments without relying on capacity held on Viking. ANR insists the proposed NorthLeg project needs to be in service by November 1, 2005 to compensate for contracts for receipts at Marshfield which start to expire at that time. ANR explains that its actions under the settlement to date regarding receipts at Marshfield are irrelevant to its proposed NorthLeg Project, noting that even if it had taken all the volumes it could at Marshfield, the underlying contracts supporting its receipts will still expire. Therefore, ANR concludes that only adding new capacity can ensure a long-term solution.

15. ANR dismisses Viking's concern that a new electric power charge could adversely impact Viking's ability to compete for Wisconsin customers. ANR reiterates that the additional capacity the new compressor will provide will enhance reliability and flexibility for all shippers. ANR comments that the proposed additional charge for the electricity used to power the new compressor will apply across the board to all shippers, as does the current charge for gas used to fuel its existing compressors. Accordingly, ANR believes that there will be no disproportionate burden on Viking's shippers or on Viking's ability to compete in Wisconsin as a consequence of ANR's proposal to obtain reimbursement for the cost of the electricity used to run the new compressor.

IV. DISCUSSION

16. ANR proposes to construct and operate facilities to be used to transport gas in interstate commerce; therefore, ANR's proposal is subject to the jurisdiction of the Commission and to the requirements of subsection (b), (c), and (e) of section 7 of the NGA.

A. Viking's Protest

17. Viking observes that ANR has not exercised its right to secure all the volumes it could under the terms of the settlement, leading Viking to question whether ANR actually needs all the new capacity its proposal will provide. Although it is clear that ANR will need to expand its system to compensate for lost Viking capacity, it is unclear precisely what quantity ANR will need to replace, because ANR's customer base is not static. We

note ANR's description of its ongoing efforts to determine current and future customer requirements, and expect ANR will secure both appropriate transportation quantities to meet these requirements and seek timely authorization for new facilities as needed to ensure that gas can reliably reach its customers.

18. We view ANR's proposal as consistent with the settlement agreement's expectation that during the 2001-to-2006 transition ANR will build "new capacity in lieu of having flowing volumes at Marshfield."⁵ Further, we find that the new capacity the NorthLeg Project proposal will increase reliability and flexibility on ANR's system. Finally, there is no indication that the present proposal might hinder or distort future proposals for further expansions. Accordingly, we find no reason to reject ANR's proposal to add compression to reduce its reliance on firm transportation capacity on Viking.

19. Viking argues that a commercial solution which precludes the need to build new facilities is the preferred result. Although efforts to arrive at such a solution resulted in the settlement agreement in 2001, a commercial solution has proved elusive in this case. Under the circumstances, we find no basis to delay action on the proposal before us.

20. We will allow ANR to recover the electric power costs of the proposed compressor through an electric power cost mechanism. Viking's concern that the electric power cost mechanism will inflate the overall cost of transporting gas to Wisconsin on Viking's system is misplaced. If ANR designed the proposed NorthLeg Project using a gas-fired compressor, ANR would seek to recover the new compressor's gas fuel costs through its currently effective fuel recovery mechanism. We see no distinction between costs incurred to operate an electric-driven compressor and costs incurred to operate a gas-fired compressor. We expect the proposed compression will enhance ANR's system's operation, to the benefit of all customers; therefore, we will permit ANR to recover the expenses incurred for the electricity used to power the new compressor unit. We do not expect this new charge to impair Viking's ability to compete for customers in Wisconsin. The charge will not apply disproportionately to Viking; it will apply equally to all shippers as part of the price of moving gas on ANR system. We accept ANR's proposal to recover electric power costs and direct ANR to file an NGA section 4 rate proceeding to establish tariff provisions for the recovery of these costs.

B. Policy Statement on New Facilities

⁵Settlement Agreement, at 14 (April 20, 2001).

21. On September 15, 1999, we issued a policy statement to provide guidance on how we would evaluate proposals for new gas facilities.⁶ In this policy statement, we establish criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. We explain that in deciding whether to authorize the construction of major new pipeline facilities, we balance public benefits against potential adverse consequences. Our 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 to the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

22. Under our policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared financially to support the project without relying on subsidization from the existing customers.⁷ 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. We also consider potential impacts of the proposed project on other pipelines in the market, on those existing pipelines' captive customers, and on landowners and communities affected by the location of the new facility. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we 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 we then proceed to complete the environmental analysis where other interests are considered.

23. As shippers' contracts for upstream capacity on Viking expire, and ANR is no longer able to call on this capacity after November 1, 2006 (i.e., at the end of the transition time provided by the settlement agreement), ANR will no longer be able to rely on the terms of the settlement to obtain gas at Marshfield to maintain service to existing and future customers. ANR's proposal to add new compression will compensate for the shortfall in Marshfield receipts that ANR expects to face. Unless ANR expands its system, it may be compelled to resort to operational flow orders to maintain firm service

⁶Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC **&**61,227 (1999), orders clarifying statement of policy, 90 FERC **&**61,128 and 92 FERC **&**61,094 (2000), order further clarifying statement of policy, 92 FERC **&**61,094 (2000).

⁷See 88 FERC **&**61,227 at 61,746 (1999).

for existing customers. We find ANR's NorthLeg Project will provide additional reliability and flexibility for ANR's existing shippers and enhance shippers' access to competitively priced domestic gas supplies.

24. Under our Policy Statement on New Facilities, increasing the rates of existing customers to pay for improvements to benefit existing customers is not a subsidy, and the costs of projects to provide such benefits may be rolled-in.⁸ The capacity provided by the proposed compression meets this criterion and will compensate for capacity lost on Viking. Existing customers will be able to hold upstream capacity on Viking to access Canadian gas or to rely on ANR's expanded capacity to obtain domestic gas. Accordingly, we find the project will be for the benefit existing shippers. But for Viking, there have been no objections to ANR's proposed rate treatment for the new compressor. In view of the benefits the NorthLeg Project can provide, we find that ANR may roll-in the costs associated with the NorthLeg Project, absent any change in material circumstance, when it makes its next general section 4 rate filing.

25. There have been no landowner objections to the proposal. We do not expect the additional compression to have an adverse impact on existing pipelines or on existing pipelines' captive customers. We find ANR's NorthLeg Project will provide additional reliability and flexibility for ANR's existing shippers and will enhance shippers' access to competitively priced domestic gas supplies. Balancing ANR's proposed project's minimal adverse impacts on the environment, landowners, and existing customers and competitors against the project's anticipated benefits, we find ANR's NorthLeg Project to be consistent with our policy statement on new facilities and required by the public convenience and necessity.

C. Environmental Assessment

26. The Commission prepared an environmental assessment (EA) for ANR's proposal. The EA addresses water resources, wetlands, vegetation, soils, geology, wildlife, sensitive species, cultural resources, land use, air quality, noise quality and alternatives.

27. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with ANR's application -- as supplemented on October 1, October 30, November 17, December 5, and December 19, 2003, and on February 12 and April 23, 2004 -- and in accordance with the mitigation measures in the appendix to this order,

⁸88 FERC ¶ 61,227 (1999) at 61,746.

approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

28. 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.⁹

29. ANR shall notify Commission staff by telephone 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.

30. At a hearing held on May 26, 2004, the Commission on its own motion received and made part of the record all evidence, including the application and exhibits thereto, as supplemented, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity pursuant to NGA section 7(c) is issued to ANR authorizing it to install and operate a new 6000 hp compressor unit at its existing Weyauwega Compressor Station in Waupaca County, Wisconsin, as more fully described in its October 1, 2003 application and the body of this order.

(B) The authority issued in Paragraph (A) above is conditioned on ANR's compliance with all relevant parts of the Commission's regulations, in particular with Part 154 and paragraphs (a), (c), (e) and (f) of section 157.20.

(C) The new compressor unit authorized herein shall be placed into service within

⁹See, e.g., *Schneidewind v. ANR Pipeline Company*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶61,091 (1990) and 59 FERC ¶61,094 (1992).

one year of the date of this order.

(D) Consistent with Part 154 of the Commission's regulations, ANR shall make its section 4 filing to establish its electric power cost mechanism 30 to 60 days before the in-service date of the new compressor unit.

(E) ANR may roll the costs of the proposed NorthLeg Project into its systemwide cost of service in its next NGA section 4 rate proceeding, unless there has been a significant change from the present facts and circumstances.

(F) The authority issued in paragraph (A) above is conditioned on ANR's compliance with the environmental conditions set forth in the appendix to this order.

(G) ANR shall notify the Commission's environmental staff by telephone and/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.

(H) Viking's protest is denied, for the reasons discussed in the body of this order.

(I) Motions to intervene out-of-time filed by Aquila, Inc. d/b/a Aquila Networks, Northern Natural Gas Company, and Wisconsin Electric Power Company jointly with Wisconsin Gas Company are granted.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

APPENDIX

ENVIRONMENTAL CONDITIONS

Docket No. CP04-1-000

1. ANR shall follow the construction procedures and mitigation measures described in its application, as supplemented (including responses to staff data requests) and as identified in the environmental assessment (EA), unless modified by this 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 delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during 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. ANR shall certify that all applications for necessary permits and clearances to construct WE Energy's electric transmission lines have been filed. Construction of the new electric substation at the Weyauwega Compressor Station site shall not begin **until this certification has been filed with the Secretary.**
4. ANR shall file a noise survey with the Secretary **no later than 60 days** after placing the authorized unit at the Weyauwega Compressor Station in service. If the noise attributable to the operation of the new unit at the station at full load exceeds a day-night sound level (Ldn) of 55 decibels of the A weighted scale (dBA) at any nearby noise sensitive areas, ANR shall install additional noise controls to meet that level **within 1 year** of the in-service date. ANR shall confirm compliance with the Ldn of 55 dBA requirement by filing a second noise survey

with the Secretary **no later than 60 days** after it installs the additional noise controls.