

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

ANR Pipeline Company

Docket No. CP02-434-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued June 5, 2003)

1. On December 26, 2002, the Commission issued a preliminary determination in this proceeding addressing the non-environmental issues raised by the ANR Pipeline Company (ANR) application for abandonment approval and certificate authorization, pursuant to Sections 7(b) and (c) of the Natural Gas Act (NGA), respectively.<sup>1</sup> ANR proposes to enlarge the capacity of its existing natural gas system by looping its Madison Lateral line, located in Wisconsin's Walworth and Rock Counties and Illinois' McHenry County, with approximately 26.3 miles of 30-inch diameter pipe, and by modifying its existing Beloit Lateral line, located in Wisconsin's Rock County, by replacing short 4- and 6-inch diameter lines with a single 20-inch diameter, 6.5-mile long line.
2. In the December 2002 order, the Commission preliminarily approved ANR's proposed WestLeg Project expansion and ANR's proposal to roll the expansion costs into its existing rate base in a future NGA Section 4 rate proceeding. However, Commission authorization of ANR's proposed WestLeg Project was reserved pending completion of an environmental review. In this order, the Commission analyzes the environmental issues raised by ANR's application, and subject to compliance with the environmental conditions contained as an appendix to this order, grants ANR certificate authorization and abandonment approval for its proposed WestLeg Project expansion. The proposed expansion is in the public interest as it will increase the potential flow of competitively priced natural gas to supply underserved markets.

**Background and Proposal**

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<sup>1</sup>101 FERC ¶ 61,376 (2002).

3. ANR maintains that the proposed WestLeg Project will enable it to access new sources of supply, bring gas to end users in the areas of Janesville and Madison, Wisconsin, and improve its system's reliability and flexibility. The proposed expansion will increase ANR's capacity to transport gas to the Madison and Janesville, Wisconsin, area by 220 MDth/d. ANR estimates the proposed project will be completed by November 2004 at a cost of \$42,087,000.

4. The proposed expansion facilities consist of the Madison Lateral loop, the Beloit Lateral replacement line, a new meter station, and modifications to two existing meter stations. The proposed 30-inch diameter, 26.3-mile long Madison Lateral loop will extend from an interconnect with ANR's mainline in McHenry County, Illinois, to a location just east of Janesville, Wisconsin. The existing Beloit Lateral, located in Rock County, Wisconsin, is made up of four separate pipelines, with diameters of 4, 6, 8, and 12 inches. ANR proposes to abandon and remove the 4- and 6-inch diameter lines and replace them with a single 20-inch diameter, 6.5-mile long line. Also, ANR proposes to install a new Tiffany East Meter Station adjacent to its existing Tiffany Meter Station, located on the southwest portion of the Beloit Lateral, to upgrade facilities at its existing Madison Meter Station, and to make minor modifications to measurement facilities at its North Madison Meter Station.

5. ANR has submitted a precedent agreement with Wisconsin Power and Light Company (Wisconsin Power and Light) for firm service under Rate Schedule FTS-3 for 60 MDth/d for a 9.5-year term. Subsequent to the December 2002 order, ANR submitted a precedent agreement with Madison Gas and Electric Company (Madison Gas and Electric) for firm service under Rate Schedule FTS-1 for 20 MDth/d for a 5-year term.<sup>2</sup> ANR proposes to charge its currently effective ML-7 maximum rates as recourse rates for service over its proposed facilities and maintains that rolled-in rate treatment for its proposed WestLeg Project is appropriate, as this will result in an overall reduction in existing customers' rates.

6. ANR states that the proposed expansion will enable it to provide transportation service for gas that has historically been carried via the Northern Natural Gas Company (Northern Natural) system. Thus, ANR proposes to terminate two transportation agreements with Northern Natural totaling 86.5 MDth/d.<sup>3</sup>

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<sup>2</sup>On January 9, 2003, Madison Gas and Electric filed comments in support of ANR's proposed expansion. As a member of the Wisconsin Distributor Group, Madison Gas and Electric had previously intervened with comments in support of the proposed project.

<sup>3</sup>One contract is used to bring gas supplied by the Dakota Gasification Company

### **Preliminary Determination and Final Decision**

7. ANR proposes to construct and operate facilities to transport gas in interstate commerce and to abandon existing interstate gas facilities. Therefore, ANR's proposal is subject to the Commission's jurisdiction and the requirements of Subsections (b), (c), and (e) of Section 7 of the NGA. In our December 2002 order we reached a preliminary determination that the proposed expansion would be consistent with the criteria set forth in our 1999 Statement of Policy on the Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement on New Facilities).<sup>4</sup> ANR has presented precedent agreements for firm service for most of the capacity to be created, and based on the rates represented in the precedent agreements, and the savings to be realized by terminating contracts with Northern Natural, expansion revenues will exceed expansion costs. In view of this, we reached a preliminary determination that barring changed circumstances, we would approve a request by ANR in a future Section 4 rate proceeding to roll the WestLeg Project costs into its existing rate base.

8. The above preliminary findings were based on our consideration of the non-environmental issues raised by ANR's application. No requests for rehearing of the December 2002 preliminary determination have been filed and we have now completed our environmental review of the proposed expansion and abandonment. We find, subject to compliance with the conditions set forth below, that the benefits of ANR's proposed WestLeg Project will outweigh any potential adverse effects, and therefore will be consistent with our Policy Statement on New Facilities and NGA Section 7. Accordingly, we conclude that the public convenience and necessity require granting the requested authorizations and approvals to ANR, as discussed herein and in our December 2002 preliminary determination. This order incorporates findings with respect to the non-environmental issues contained in the preliminary determination and constitutes the Commission's final decision on ANR's WestLeg Project application.

### **Environmental Review**

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<sup>3</sup>(...continued)

from Ventura, Iowa, to Janesville, and one contract is used to provide transportation from Greensburg, Kansas, to Janesville. These two transportation agreements will be terminated in accordance with the provisions of the contracts.

<sup>4</sup>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).

9. On September 23, 2002, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed WestLeg Project and Request for Comments on Environmental Issues (NOI). Comments in response to the NOI were received from the U.S. Fish and Wildlife Service (FWS); the U.S. Department of Health and Human Services (HHS); Illinois' McHenry County Conservation District (MCCD); the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP); the Illinois Department of Natural Resources (DNR); and the Wisconsin DNR. The Illinois DNR and the Wisconsin DNR assisted our staff as cooperating agencies in the environmental review of the project. Additional comments were received from the U.S. Army Corps of Engineers (COE) and several landowners during a site visit conducted on November 21, 2002. Substantive issues raised in comments responding to the NOI are addressed in the Environmental Assessment (EA).

10. On March 28, 2003, we issued a Notice of Availability of the Environmental Assessment for the Proposed WestLeg Project (NOA). The EA addresses geology, soils, groundwater, waterbodies, vegetation, wetlands, vegetative communities of special concern, wildlife, fisheries, threatened and endangered species, land use, cultural resources, air quality and noise, pipeline safety, environmental justice, cumulative impacts, and alternatives. In response to the NOA, we received comments from the Illinois DNR, the Wisconsin DNR, the Illinois Department of Agriculture (DOA), the Illinois Nature Preserves Commission (NPC), the Wisconsin DATCP, HHS, and FWS.<sup>5</sup> ANR has replied to certain of these comments. All of the comments discussed below pertain to the 26.3-mile long Madison Lateral loop.

11. FWS expressed concerns about construction impacts on the wetland on the Clemetson property, located in Illinois between milepost (MP) 5.9 and 6.1, and requests that this section be crossed using a subsurface technique, *i.e.*, either a horizontal directional drill (HDD) or bore, rather than the proposed open cut. The Illinois NPC also expresses concerns about impacts on this wetland. The HDD and horizontal bore methods were evaluated in the EA and found not feasible.<sup>6</sup> However, we have since found cause to reassess the feasibility of employing the HDD crossing technique.

12. Subsequent to issuing the EA, ANR submitted geotechnical information purporting to indicate that HDD crossings in this area would have a low probability of success. However, while ANR's report describes potential difficulties with HDD in the general

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<sup>5</sup>The Wisconsin DATCP and DNR suggest additions and changes to the EA and clarify minor oversights and discrepancies. Issues that merit expanded discussion and revisions are addressed herein. We will not reprint and recirculate the EA to correct these minor items.

<sup>6</sup>See EA Section 3.3.3.

project area, it does not conclusively demonstrate that this type of construction must be precluded at any specific site. The report discusses difficulties an HDD crossing might encounter on this proposed project (e.g., difficulty of drill stem steering; inadvertent release of drilling mud, cave-in, and excessive drag on the pipe). These described difficulties are among those frequently encountered in horizontal drilling, and ANR presents no evidence of extraordinary obstacles that would preclude HDD in this case. ANR's site-specific bore samples found the presence of gravel, cobble, and "heaving sands" that could affect HDD success on the Clemetson property. However, ANR's report did not estimate the probability of drill problems or failure at this location and did not affirm that an HDD could not be successfully completed. Further, subsequent to issuing the EA, the COE has indicated that drilling mud was inadvertently released during a prior HDD wetland crossing in McHenry County and the pressure of the mud contained below the vegetation root mat resulted in a "dome effect" whereby the sod was lifted out of place.<sup>7</sup> However, these impacts appear to have been short term, and after a year of monitoring, the surface vegetation in the affected area appears to be reestablishing satisfactorily, despite the problem with the release of drilling mud. Subsurface hydrology is still being monitored, but there has been no obvious manifestation of compromised wetland function. In addition, HDDs have been successfully completed at several other locations in the general project area. For example, Horizon Pipeline Company, L.L.C. reports completing a successful HDD of a wetland several miles south of McHenry County and successful HDDs have been completed in the region in connection with the Guardian Pipeline L.L.C. project.<sup>8</sup>

13. Our task is to determine whether potential problems associated with an HDD outweigh the benefits of a successful HDD. We have decided to reassess whether an HDD should be used in lieu of a traditional open-cut crossing for the wetland on the Clemetson property because we are not confident we have enough information to reject an HDD crossing. We therefore direct ANR to continue to evaluate an HDD crossing at this location. As one possible option, photo alignments suggest there is open upland space adequate to relocate the HDD entry and exit points so that the curvature of the HDD path may be adjusted to trace a gentler parabolic arc, and thereby avoid the pockets of problematic materials discovered in the bore samples, which are located at the deeper end of the path curve. This issue is addressed in Environmental Condition 17 in the Appendix to this order.

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<sup>7</sup>See Horizon Pipeline Company, L.L.C., 92 FERC ¶ 61,205 (2000) (preliminary determination) and 96 FERC ¶ 61,053 (2001) (order issuing certificate and approving abandonment).

<sup>8</sup>Guardian Pipeline L.L.C., 91 FERC ¶ 61,285 (2000) (preliminary determination) and 94 FERC ¶ 61,269 (2001) (order on reh'g and issuing certificates).

14. FWS requests that ANR use special restoration measures for the wetland on the Clemetson property (including reseeded with native wetland species), monitor and control invasive species for 5 years following construction, and meet performance standards based on pre-construction floristic surveys. A successful HDD would avoid impacts to this wetland. However, in the event the HDD cannot be completed or the wetland is otherwise impacted, we agree additional measures will be necessary to restore this wetland.

15. ANR's environmental construction plan<sup>9</sup> includes ANR's wetland monitoring protocols. Wetland revegetation will be monitored "annually until successful" and the plan includes remedial revegetation if restoration does not meet certain criteria. We recognize, however, that site-specific concerns may require modifications of restoration and monitoring methods/criteria at a given location. Therefore, based on the discussion in the EA, Environmental Conditions 18 and 19 in the Appendix to this order contain provisions to ensure that the Clemetson property and certain other wetlands will be restored according to plans developed by ANR in consultation with the appropriate Federal and State agencies and landowners. These plans will be filed with the Commission and used during the Commission's compliance inspections to verify that wetland restoration is proceeding satisfactorily.

16. The EA recommends an environmental condition requiring ANR to cross several streams using a dry-ditch method. Subsequent to issuance of the EA, ANR has provided additional information regarding the size and condition of the Lawrence Creek. Lawrence Creek is not 25 feet wide, as originally reported, but only 7 feet wide and 3 to 6 inches deep, and even shallower during periods of dry weather. Further, ANR reports that agricultural practices have lowered the quality of this stream at the crossing location and cites a 1998 McHenry County, Illinois, study that grades the stream as a Class C/D waterbody. Based on these factors, we have removed Lawrence Creek from the list of streams that must be dry crossed. Environmental Condition 12 reflects this revision.

17. Several State agencies request that local permitting requirements be attached as conditions to this order, e.g., timing windows for stream crossings, provisions for resolving real estate issues, coordination of construction timing with planned land uses, and development of special construction methods across agricultural land. The EA addresses stream crossings, land use, agricultural impacts, etc.; the EA does not prevent State agencies from conducting their local permitting processes.

18. The Illinois NPC requests that a subsurface method be used to cross Nippersink Creek and the adjacent wetlands. The length of the creek and associated wetlands is about

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<sup>9</sup>See Appendix C of the EA.

900 feet. However, the area surrounding the creek and wetlands consists of an additional stretch of over 2,800 feet consisting mainly of upland forest. Staging HDD entry and exit holes within this forested stretch would result in additional environmental impact on wetlands or forested upland. Lengthening the HDD to avoid all of these habitats would make the HDD unnecessarily long to avoid the creek. Further, Environmental Conditions 12 and 16 require ANR to perform construction in a manner which minimizes the environmental impact. ANR must use a dry-crossing technique for Nippersink Creek and develop site-specific crossing and restoration plans for the surrounding area, including the wetlands. ANR must reduce the construction right-of-way width through the wetland area. We believe these measures will minimize the impact of the creek and wetland crossing.

19. The Illinois NPC contends that additional measures are necessary to protect the State-listed Blanding's turtle. In response, ANR has agreed to adopt the species-specific recommendations of the Illinois DNR, including the use of silt fencing and special monitoring. The Illinois DNR requests measures to protect the State-listed slippershell mussel. The EA includes a discussion of the slippershell mussel, including measures ANR has proposed to satisfy Illinois DNR requirements, which includes obtaining an Illinois DNR incidental take permit if necessary.

20. The Wisconsin DNR expresses concern over ANR's crossing of the Wisconsin DNR Public Hunting Grounds between MP 14.9 and 15.3 because of the presence of sedge meadow wetland and prairie remnant habitat, and opposes ANR's proposed open-cut crossing of Turtle Creek at MP 18.9. The Wisconsin DNR requests that alternate routes be used instead of crossing these locations along the proposed alignment. We have evaluated alternate routes in the EA and concluded that none of them are preferable. Although a reroute is not appropriate for the Turtle Creek crossing, ANR has agreed to the Wisconsin DNR's request to cross Turtle Creek with a flume. ANR will develop specific crossing plans for both of these locations.

21. The Wisconsin DNR requests that FERC require ANR to weigh down the pipeline in areas of prior disturbed wetlands, in anticipation of such sites eventually being restored to wetland condition. Alternatively, the Wisconsin DNR requests that ANR agree to return at a later date to weigh down the pipeline upon a site being restored to wetland condition. ANR states it has obtained (or is waiting to obtain) location information where prior converted wetlands exist. The Wisconsin DNR has not indicated locations where wetland restoration is to be attempted. If the Wisconsin DNR knows of locations where this type of wetland restoration is scheduled, it should identify them prior to ANR's construction so that ANR can use weights where appropriate. We do not believe it is reasonable to require pipe be weighed down in all prior converted wetlands merely because future restoration is theoretically possible. In addition, we do not support taking a pipeline out of service and uncovering it to weigh it down after construction.

22. The Illinois DOA seeks to develop an Agriculture Impact Mitigation Agreement (AIMA) with ANR that would contain construction protocols to reduce impacts on agricultural land in Illinois. The Illinois DOA notes that discussions with ANR have been productive and that there is a "good probability" that ANR will enter into an AIMA agreement. In response to the Illinois DOA, ANR affirms it is in the process of developing an agricultural mitigation plan that it will use for construction across agricultural lands in Illinois. ANR intends to submit this plan to the Illinois DOA for review. The Illinois DOA requests the Commission include the AIMA as a condition to this order, or if an AIMA is not finalized, then require that ANR adhere to the Illinois DOA's general AIMA (with the exception of the provision regarding pipeline depth). While we believe it is important for an applicant to come to satisfactory terms with State and local agencies, we believe the conditions imposed by this order are adequate to ensure that the proposed construction will not adversely impact agricultural land. Accordingly, although we encourage ANR to complete a project-specific AIMA with Illinois, we will not compel ANR to conform with the State's general AIMA.

23. The Wisconsin DATCP believes an agreement on additional and best management practices is necessary to protect agricultural resources. The Wisconsin DATCP describes several specific soil limitations and potential impacts it wants ANR to address with best management practices and questions ANR's commitment to completing the requested additional agreement. In a preliminary response to the Wisconsin DATCP's concerns and requests, ANR states its intention to meet with the Wisconsin DATCP to address and resolve specific agency concerns. We support this effort and will require ANR to submit its final set of best management practices for agricultural lands in Wisconsin for the review and written approval of the Director of the Office of Energy Projects before construction will be authorized.

24. The Wisconsin DATCP requests that the Commission establish its requested construction methods as default construction protocols and grant ANR a greater right-of-way width to allow specialized construction techniques such as triple-ditching and full corridor topsoil segregation. We recognize the importance of developing construction techniques that will reduce impact on agricultural land. However, ANR has developed an environmental construction plan which we reviewed in the EA. Any modifications to this plan should be a part of ANR's discussion with the Wisconsin DATCP concerning best management practices; thus, we will not impose the requested default construction protocols. We find no need to provide a wider right-of-way along the Wisconsin portion of the proposed project, since companies can request additional workspace at site-specific locations. We consider such requests on a case-by-case basis, and where appropriate, routinely provide for additional workspace.

25. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with ANR's application, as supplemented, approval of the proposed WestLeg Project would not constitute a major Federal action significantly affecting the quality of the human environment.<sup>10</sup> We will require that ANR establish an environmental complaint resolution procedure so that any concerns about the mitigation measures can be quickly addressed and resolved.

26. Any state or local permits issued with respect to the expansion facilities described herein and in the application, as supplemented, must be consistent with the conditions of ANR's authorization. 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 authorized by this Commission.<sup>11</sup> ANR shall notify the Commission's environmental 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.

27. At a hearing held on June 4, 2003, the Commission, on its own motion, received and made a part of the record, all evidence, including the application, as supplemented, and exhibits thereto, submitted in this proceeding, and upon consideration of the record,

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<sup>10</sup>HHS states it concurs with this finding.

<sup>11</sup>See, 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).

The Commission orders:

(A) ANR is granted authorization, pursuant to NGA Section 7(c), to construct, operate, and maintain natural gas facilities, as described and conditioned herein and in our December 2002 order, and as more fully described in ANR's application, as supplemented.

(B) ANR is granted permission and approval, pursuant to NGA Section 7(b), to abandon and remove the 4- and 6-inch diameter lines of its Beloit Lateral, as described and conditioned herein and in our December 2002 order, and as more fully described in ANR's application, as supplemented.

(C) The Ordering Paragraph (A) authorization and Ordering Paragraph (B) permission and approval are conditioned on the following:

- (1) ANR completing the proposed facilities and making them available for service within 18 months of issuance of this final order, pursuant to paragraph (b) of Section 157.20 of the Commission's regulations;
- (2) ANR complying with all applicable Commission regulations under the NGA, including, but not limited to, Parts 154 and 284, and paragraphs(a), (c), (e), and (f) of Section 157.20 of the Commission's regulations;
- (3) ANR notifying the Commission within 10 days of the date of the abandonment of facilities;
- (4) ANR executing contracts for the level of service and the terms of service represented in the precedent agreements prior to commencing construction;
- (5) ANR filing its service agreement with Wisconsin Power and Light as a negotiated rate agreement at least 30 days before the WestLeg Project's in-service date;
- (6) ANR filing its service agreement with Madison Gas and Electric as a negotiated rate agreement at least 30 days before the WestLeg Project's in-service date; and

- (7) ANR complying with the specific environmental conditions listed in the appendix this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

**APPENDIX**

**Environmental Conditions**  
ANR Pipeline Company's WestLeg Project  
Docket No. CP02-434-000

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;
  - 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 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, contractor personnel will be informed of the environmental inspectors' 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

all 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 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 describing how ANR will implement

the mitigation measures required by this order. ANR must file revisions to the plan as schedules change. The plan shall identify:

- a. 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;
  - b. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
  - d. what 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);
  - e. the company personnel (if known) and specific portion of ANR's organization having responsibility for compliance;
  - f. the procedures (including use of contract penalties) ANR will follow if noncompliance occurs; and
  - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - i. the completion of all required surveys and reports;
    - ii. the mitigation training of onsite personnel;
    - iii. the start of construction; and
    - iv. the start and completion of restoration.
7. ANR shall employ at least one environmental inspector per construction spread. The environmental inspectors shall be:
- a. responsible for monitoring and ensuring compliance with all mitigative 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 Environmental Condition 6) 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.
8. ANR shall file updated status reports prepared by the head environmental inspector with the Secretary on a **weekly** basis **until** all construction-related activities, including restoration and initial permanent seeding, 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. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) 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);
  - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
  - d. the effectiveness of all corrective actions implemented; and
  - e. copies of any correspondence received by ANR from other Federal, State or local permitting agencies concerning instances of noncompliance, and ANR's response.
9. ANR must receive written authorization from the Director of OEP **before commencing service** from each section of the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way is proceeding satisfactorily.
10. **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 and installed 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 along the right-of-way where compliance measures were not properly implemented, if not

previously identified in filed status reports, and the reason for noncompliance.

11. ANR shall conduct follow-up inspections of all disturbed areas after the first and second growing seasons and file quarterly activity reports that document the results of the field inspection.
12. ANR shall cross the following waterbodies on the Madison Lateral Loop using dry-ditch construction: Nippersink Creek (MP 2.2), Darien Creek (MP 18.4), and Spring Brook (MP 21.1). Alternately, ANR may use an open-cut ("wet") construction technique for these streams if prior to construction it files with the Secretary written approval from the appropriate state agency to use this stream crossing method .
13. ANR shall reduce its temporary construction right-of-way width by 25 feet on the south side of the pipeline between MPs 2.27 and 2.63 of the Madison Lateral Loop.
14. ANR shall use a 75-foot-wide construction right-of-way in all wetlands. If ANR needs a wider right-of-way in a specific wetland, it shall file a site-specific request with the Secretary for the Director of OEP's review and written approval.
15. ANR shall develop active wetland revegetation plans for all scrub-shrub and forested wetlands crossed by the WestLeg Project. These plans shall include specifications for the planting of native wetland species (including native trees and shrubs), and be developed in consultation with the appropriate state agency and the U.S. Army Corps of Engineers (COE). ANR shall file these plans with the Secretary for the review and written approval of the Director of OEP prior to construction.
16. ANR shall file a site-specific crossing and restoration plan for the portion of the Madison Lateral Loop adjacent to the Alden Sedge Meadow Natural Area. This plan shall include all wetland areas between MPs 2.0 and 2.3. Crossing methods and mitigation measures shall be developed in coordination with the U.S. Fish and Wildlife Service (FWS), Illinois Nature Preserves Commission (NPC), and Illinois' McHenry County Conservation District. The restoration plan shall include 1) an acceptable seed mix, 2) measures that would minimize the spread or recolonization of the right-of-way with noxious weeds or invasive species, and 3) a monitoring program to assess restoration and control invasive species.
17. ANR shall cross the Clemetson property wetland (MP 5.9 to 6.1 of the Madison Lateral Loop) using a horizontal directional drill (HDD). If ANR believes an HDD

can not be completed successfully, it must submit a second opinion from a qualified HDD contractor including additional site-specific geotechnical information to support the conclusion and an evaluation of a revised HDD alignment or a reason why a revised alignment is not feasible. ANR shall also file a site-specific crossing plan for the HDD or open-cut crossing. If the crossing is an open cut, ANR shall continue consulting with FWS, COE, and Illinois NPC regarding the potential to use sod-stripping. The consultation shall take into account "premium locations" (*i.e.*, where root mat thickness and native plant species indicate that sod stripping would be feasible and advantageous). ANR shall file the plan with the Secretary for review and written approval by the Director of OEP before construction.

18. ANR shall file a site-specific wetland restoration plan for the Clemetson property, for use in the event the wetland is impacted by problems associated with the HDD crossing or if the property cannot be crossed by an HDD. The restoration plan shall be developed in coordination with the FWS, COE, and the Illinois NPC. The restoration plan shall include (1) an acceptable seed mix, (2) measures that would minimize the spread or recolonization of the right-of-way with noxious weeds or invasive species, and (3) a monitoring program to assess restoration and control invasive species.
19. ANR shall file site-specific crossing and restoration plans for the private parcels near MPs 4.06, 4.22, 4.35, and 5.58 of the Madison Lateral Loop. Restoration plans shall be developed in coordination with FWS, COE, and the Illinois NPC. The restoration plans shall include (1) an acceptable seed mix, (2) measures that would minimize the spread or recolonization of the right-of-way with noxious weeds or invasive species, and (3) a monitoring program to assess restoration and control invasive species.
20. ANR shall defer construction and use of facilities and staging, storage, and temporary work areas and new or to-be-improved access roads until:
  - a. ANR files with the Secretary cultural resource reports for the denied access areas in Wisconsin and Illinois and the extra work/staging areas, any required treatment plans, and the appropriate State Historic Preservation Offices' (SHPO) comments on the reports and any plans;
  - b. ANR files with the Secretary the Wisconsin SHPO's comments regarding the South Madison and North Madison Meter Stations; and
  - c. the Director of OEP reviews and approves all cultural resources reports and plans and notifies ANR in writing that it may proceed.

**All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: "CONTAINS PRIVILEGED INFORMATION--DO NOT RELEASE."**

21. ANR shall continue consulting with the Wisconsin Department of Agriculture, Trade, and Consumer Protection in the development of best management practices for construction across agricultural lands in Wisconsin. **Prior to construction**, ANR shall file the results of this consultation with the Secretary for the review and written approval of the Director of OEP.
  
22. ANR shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems or concerns during construction of the project and restoration of the right-of-way. ANR shall mail the complaint resolution procedures to each landowner whose property would be crossed by the project before construction is authorized to proceed. In its letter to affected landowners, ANR shall:
  - a. provide a local contact and telephone number that the landowners **should call first** with their concerns, and indicate how soon a landowner should expect a response;
  - b. provide the ANR Hotline telephone number that the landowners should call if they are not satisfied with the response from the local contact, and indicate how soon to expect a response; and
  - c. instruct the landowners that if they are still not satisfied with the response from ANR's Hotline, they should contact the Commission's Enforcement Hotline at (877) 337-2664.

ANR shall also include a table in its weekly status report containing the following information for each problem or concern:

- a. the identity of the caller and date of the call;
- b. the identification number from the certificated alignment sheets of the affected property and approximate location by MP;
- c. a description of the problem or concern; and
- d. an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.