

107 FERC ¶ 61,042
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ANR Pipeline Company

Docket No. CP04-51-000

ORDER ISSUING CERTIFICATE AND GRANTING ABANDONMENT

(Issued July 12, 2004)

1. On January 12, 2004, ANR Pipeline Company (ANR) filed an application under sections 7(b) and 7(c) of the Natural Gas Act (NGA). ANR seeks authorization to construct and replace certain facilities, located in Washington, Brown and Oconto Counties, Wisconsin, referred to as the EastLeg Project. Approval of the EastLeg Project is in the public interest because the project is required to provide up to 143,400 Dth/d of pipeline capacity to serve two new power plants in Wisconsin. This order grants the authorization subject to the conditions set forth herein.

Background and Proposal

2. ANR states that, in response to increased demand for reliable power generation in Wisconsin, the Public Service Commission of Wisconsin has approved the construction of two new gas fired power plants. Wisconsin Electric Power Company's (WEPCO) Port Washington Generating Station, a 1,090 megawatt (MW) facility located in Port Washington, Ozaukee County, Wisconsin, is under construction with commercial operation expected to commence on July 1, 2005. Calpine Corporation's Fox Energy Center, a 600 MW facility located in Kaukauna, Outagamie County, Wisconsin, is also under construction with commercial operation expected to commence on June 1, 2005.¹

3. As a result of an open season held from June 10, 2003, to July 10, 2003, ANR executed precedent agreements with WEPCO to provide firm service for 70,000 Dth/d and with Wisconsin Public Service Corporation (WPS) for firm service of 25,600 Dth/d, totaling 95,600 Dth/d. Service will be provided under 10-year service agreements under ANR's Rate Schedule FTS-3. FTS-3 service permits the shipper to take its entire daily

¹ See ANR's April 5, 2004 response to Data Request No. 4.

volumes in 16 hours, as opposed to 24 hours under ANR's other firm transportation rate schedules. Thus, ANR states that it is required to design its expansion to accommodate up to 143,400 Dth/d of firm capacity on a steady-state basis.²

4. In order to provide the requested service, ANR seeks authorization: (1) to replace 4.7 miles of 14-inch mainline loop pipeline with 30-inch pipe on its mainline between West Bend and Jackson in Washington County, Wisconsin; (2) to install 3.5 miles of 8-inch pipeline loop on its existing Denmark Lateral near Little Rapids in Brown County, Wisconsin; and (3) to re-wheel the existing 9,100 horsepower (hp) compressor unit³ and add gas cooling facilities at ANR's Mountain Compressor Station in Oconto County, Wisconsin.⁴ Upon re-wheeling the 9,100 hp unit, ANR would no longer operate it as a back-up unit, but would operate the 9,100 hp compressor unit as a primary unit along with the Mountain Compressor Station's existing 12,000 hp compressor unit. The estimated cost of the project is approximately \$18.7 million.⁵

5. ANR's precedent agreements with WEPCO and WPS anticipate execution of service agreements under Rate Schedule FTS-3 for firm transportation service commencing on November 1, 2005, at fixed negotiated rates, and with pressure commitments and rights of first refusal. ANR's precedent agreement with WEPCO also anticipates the execution of a no-notice service agreement at a negotiated rate under Rate Schedule NNS and a firm storage service agreement at maximum rates under ANR's

² 95,600 Dth/d divided by 16 hours times 24 hours equals 143,400 Dth/d.

³ Re-wheeling will expand the operating range of the compressor unit, but will not change its horsepower rating.

⁴ ANR will install other auxiliary equipment and appurtenances pursuant to section 2.55(a) of the Commission's regulations. In addition, ANR will construct two new delivery points under its Part 157 blanket certificate authority. ANR will deliver gas to WEPCO through the new Hartford East Delivery Point into Wisconsin Gas Company, an LDC affiliate of WEPCO. WPS' volumes will be delivered to the new Fox Energy Center Delivery Point.

⁵ ANR's instant filing is based on the state of ANR's system as of the completion of its NorthLeg Project as filed in Docket No. CP04-1-000. Consequently, the precedent agreements in the instant proceeding are conditioned on ANR's acceptance of a certificate from the Commission authorizing the NorthLeg Project. The Commission issued a certificate, on June 2, 2004, authorizing the NorthLeg Project. *See* 107 FERC ¶ 61,250 (2004). On June 18, 2004, ANR accepted the certificate.

Rate Schedule FSS.⁶ ANR requests approval of the negotiated rates contained in the applicable service agreements. ANR also requests approval of the negotiated rate option, included in the WEPCO and WPS precedent agreements, for firm transportation “bridge service” under Rate Schedule FTS-1, to be used in case there is a delay of the targeted in-service date of November 1, 2005.

Notice and Interventions

6. Notice of ANR’s EastLeg Project was published in the *Federal Register* on January 28, 2004, with comments due on February 11, 2004.⁷ Thirteen timely motions to intervene were filed by Calpine Corporation; Proliance Energy, LLC; Wisconsin Public Service Corporation; Wisconsin Distributor Group; Wisconsin Electric Power Company and Wisconsin Gas Company; Viking Gas Transmission Company; Public Service Commission of Wisconsin; The Peoples Gas Light and Coke Company and North shore Gas Company; Madison Gas and Electric Company; Michigan Consolidated Gas Company; Semco Energy Gas Company; Rochester Gas and Electric Corporation; and Duke Energy Trading and Marketing, LLC and Duke Energy Marketing America, LLC.⁸ On February 17, 2004, Aquila, Inc. d/b/a Aquila Networks filed a motion to intervene out-of-time. Pursuant to Rule 214 (18 CFR § 385.214 (2003)), all timely filed motions to intervene are granted. Granting Aquila’s late intervention will not disrupt this proceeding or place additional burdens on existing parties. Therefore, for good cause shown, the Commission will grant Aquila’s motion.

⁶ ANR states that, in order to accommodate WEPCO’s need for services at the Port Washington Generating Station prior to the targeted November 1, 2005 in-service date of the EastLeg Project, ANR and WEPCO have entered into a “start-up” FTS-3 service agreement, at a discounted rate, for the summer period June 1, 2005, through October 1, 2005. ANR further states that this agreement is not dependent on construction of the EastLeg Project, because it will not extend into the winter when the project capacity will be necessary to provide firm service, and does not require Commission approval.

⁷ 69 Fed. Reg. 4122 (2004).

⁸ Timely unopposed motions to intervene are granted by operation of Rule 214.18 of the Commission’s Rules of Practice and Procedure. 18 CFR § 385.214 (2003).

7. The Wisconsin Distributor Group (WDG)⁹, WPS, and WEPCO and Wisconsin Gas Company (together, We Energies) filed comments in support of the project. WDG believes that the EastLeg project will improve the reliability and quality of ANR's services by enhancing the gas pipeline infrastructure serving Wisconsin, especially in Washington and Brown Counties, while at the same time enabling ANR to continue to meet the existing customers' requirements. WPS and We Energies support the project as necessary to meet commitments to provide fuel for the two new power plants. We Energies comments that it has made financial commitments in excess of \$600 million toward the construction of the Port Washington Generating Station, and requests prompt review and approval of the project.

Discussion

8. ANR's proposal to construct the EastLeg Project facilities to transport gas in interstate commerce is subject to the Commission's jurisdiction and the requirements of subsections (b), (c) and (e) of section 7 of the NGA.

9. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.¹⁰ The Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the 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 of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

⁹ The WDG is an *ad hoc* group of local distribution companies in Wisconsin. For purposes of this proceeding the members of the WDG are Alliant Energy, Wisconsin Power & Light Company, City Gas Company, Madison Gas & Electric Company, Wisconsin Gas Company, Wisconsin Electric Power Company, and Wisconsin Public Service Corporation.

¹⁰ Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement), 88 FERC ¶ 61,227 (1999); *order clarifying statement of policy*, 90 FERC ¶ 61,128 (2000); *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000).

10. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from the existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers.

11. The Commission also considers potential impacts of the proposed project on other pipelines in the market and those existing pipelines' captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission then proceed to complete the environmental analysis where other interests are considered.

12. The Commission's Policy Statement directs that the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. ANR has 10-year precedent agreements with two shippers for the entire capacity of the project. Revenues will recover more than \$4.8 million over the cost-of-service for each year of the 10-year terms of the agreements, thus insulating existing customers from the project's costs.¹¹ Therefore, ANR's proposal satisfies the Policy Statement's threshold requirement.

13. ANR's existing customers will not be adversely affected because the project will neither increase ANR's tariff rates nor degrade any service currently provided. Existing pipelines and their customers will not be adversely impacted because the project will provide service to new power plants and therefore will not diminish service currently provided by any other pipeline. Landowners and the environment will suffer minimal impact, because the EastLeg Project is essentially a replacement and looping project using existing rights of way and needing only 10 acres of new permanent rights of way.

14. The proposed project is required to supply fuel for two new power plants as part of the response to an increasing demand for reliable power generation in Wisconsin. Additionally, the project will increase the reliability of service on ANR's system.

¹¹ See ANR's April 5, 2004 response to Data Request No. 2, Exhibit N, page 2 of 9.

15. The Commission finds that ANR's proposal can proceed without subsidies and that the benefits of the project outweigh any potential adverse impacts. Therefore, the proposal is consistent with the Policy Statement and section 7(c) of the NGA. Accordingly, balancing the factors set forth in the Policy Statement, we conclude that ANR's proposed project is required by the public convenience and necessity.

Rates

Initial Rates and Rolled-in Rate Treatment

16. ANR states that it intends to operate the project as an integrated portion of its mainline system. ANR has offered the shippers the option of the current applicable maximum rates set forth in ANR's Rate Schedules or a negotiated rate. Both parties chose the negotiated rate option for all services, except for FSS service for which WEPCO will be charged the maximum rates. ANR proposes that the initial rates for the project be the current maximum Rate Schedule FTS-3 rates. Revenues will exceed the annual cost of service by over \$4.8 million per year. Though ANR is not seeking a predetermination in favor of rolled-in rate treatment as a condition of the certificate, we will require ANR to roll in the costs of this project in its next section 4 general rate case, absent material changes in the relevant facts and circumstances.

Precedent Agreements

17. The Precedent Agreements WEPCO and WPS signed as a result of the open season contain a total of six ANR service agreements (4 FTS-3, 1 FSS, and 1 NNS) containing rates, terms, quantities, points of service and in some cases pressure commitments under which ANR is willing to provide service to the shipper. The Precedent Agreements have 10-year terms with a service commencement date of November 1, 2005. ANR states that both WEPCO and WPS were given the option of selecting negotiated rates or the recourse rates, *i.e.*, the current applicable maximum Rate Schedule FTS-3 rates as set forth in ANR's FERC Gas Tariff, for the firm transportation service utilizing the capacity created by the EastLeg Project facilities. ANR also states that except for the fixed negotiated rates provided in the FTS-3 and NNS service agreements there are no other provisions in the subject service agreements requiring Commission approval as non-conforming to ANR's tariff. ANR is seeking approval of the negotiated rates contained in the applicable service agreements and, as discussed below, the rate options included in the Precedent Agreements.

18. The Precedent Agreements include a Rate Option for "bridge service" in case there is a delay of the target in-service date of November 1, 2005. Upon the recognition by ANR of a delay of the in-service date, ANR will notify each shipper of the delay and

at such time the shipper may exercise its option for temporary bridge service under ANR's Rate Schedule FTS-1 with the Primary Route being from ANR's Marshfield Receipt Point to the appropriate new delivery point . The rate charged for this bridge service would be a negotiated rate, different from the FTS-3 negotiated rate, as described in the Precedent Agreements. Service for the bridge service would be available subject to available capacity and applicable to a Primary Route MDQ of up to 50,000 Dth/day for WEPCO and 25,600 Dth/day for WPS, from November 1, 2005 until the commencement of service under the proposed FTS-3 service agreements, at which time the bridge service would be terminated.

19. WEPCO's FTS-3 service agreements contemplate service by ANR not to exceed a total of 70,000 Dth/day¹² to a new Hartford East Delivery Point. The FSS service agreement provides for a maximum storage quantity of 515,900 Dth and the NNS service agreement provides for No Notice Entitlements of 10,192 Dth. The services are to be provided for a 10-year term with a target commencement date of November 1, 2005 (June 1, 2005 for the FSS and NNS services). The WPS FTS-3 service agreement contemplates service by ANR not to exceed 25,600 Dth/day¹³ to a new Fox Energy Delivery Point. The service is to be provided for a 10-year term with a target commencement date of November 1, 2005.

20. The FTS-3 service agreements are determined to be non-conforming service agreements because they contain provisions for pressure commitments and rights of first refusal which are not found in the Form of Agreement¹⁴ in ANR's tariff. The NNS service agreement also contains a provision for right of first refusal. These provisions are found to be acceptable because section 6, Incorporation By Reference, of the Form of Agreement incorporates by reference into the service agreement the provisions of the applicable Rate Schedule and General Terms and Conditions (GT&C) of ANR's Tariff. Section 22, Right of First Refusal, of the GT&C of ANR's tariff provides a right of first refusal to long-term shippers to continue firm transportation at the expiration of their agreements. Section 11, Pressure at Receipt Point(s) and Delivery Points, of ANR's tariff

¹² WEPCO's FTS-3 capacity of 70,000 Dth/day taken over 16 hours/day requires 105,000 Dth/day of pipeline capacity.

¹³ WPS' FTS-3 capacity of 25,600 Dth/day taken over 16 hours/day requires 38,400 Dth/day of pipeline capacity.

¹⁴ Form of Agreement (For use under Transporter's Rate Schedules ETS, STS, FTS-1, FTS-2, FTS-3, ITS, ITS-3, FSS, DDS, MBS, PTS-1, PTS-2, PTS-3, NNS, IPLS and IWS).

provides for ANR, if mutually agreed upon, to make minimum receipt or delivery pressure commitments to shippers on a nondiscriminatory basis.

21. Although ANR has requested the Commission's approval of the negotiated rates contained in the service agreements and the rate options included in the Precedent Agreements, we will not do so here. In certificate application proceedings, it has been the Commission's policy to approve the applicable recourse rate rather than make a determination that applies to any proposed negotiated rates.¹⁵

22. Therefore, in order to comply with the Alternative Rate Policy Statement,¹⁶ the Commission is directing ANR to file its executed negotiated rate contracts or numbered tariff sheets not less than 30 days and not more than 60 days prior to the commencement of FTS-3 service on the expansion facilities, and, in the event the Rate Option for bridge service is exercised, prior to commencement of FTS-1 "bridge" service. If ANR chooses to submit tariff sheets, ANR must state for each shipper paying a negotiated rate the following information: (1) the exact legal name of the shipper; (2) the total charges (the negotiated rate and all applicable charges); (3) the receipt and delivery points; (4) the volumes of gas to be transported; (5) the applicable rate schedule for the service; and (6) a statement affirming that the negotiated rate contract does not deviate in any material aspect from the form of the service agreement in the tariff. ANR must also disclose all consideration linked to the agreements.¹⁷ In addition, ANR is required to maintain separate and identifiable accounts for volumes transported, billing determinates, rate components, surcharges, and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate cases. When ANR files the negotiated rate tariff sheets or contracts under section 4, interested parties may protest, should they believe the rates are discriminatory.

¹⁵ See *Gulfstream Natural Gas System, LLC* 105 FERC ¶ 61,052 (2003).

¹⁶ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, Alternative Rate Policy Statement* 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996); *petition for review denied*, *Burlington Resources Oil & Gas Co. v. FERC*, Nos. 96-1160, *et al.*, U.S. App. Lexis 20697 (D.C. Cir. July 20, 1998). *Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), rehearing pending.

¹⁷ *Columbia Gulf Transmission Company*, 85 FERC ¶ 61,373 (1998).

Environment

23. On January 29, 2004, we issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Eastleg Expansion Project and Request for Comments on Environmental Issues and Notice of Site Visit. One landowner whose property is affected by the pipeline route submitted comments. No written comments were received from other landowners or from federal, state, and local agencies on specific concerns about the project or issues that should be considered during preparation of the EA. Our staff addressed all comments in the environmental assessment (EA).

24. The EA addresses geology, soils, water resources, vegetation, wildlife, fisheries, federally listed endangered and threatened species, land use, residential properties, cultural resources, noise and air quality, pipeline safety, and alternatives. On May 5, 2004, the EA was mailed to federal, state and local agencies, public interest groups, affected landowners, newspapers, libraries, and parties to this proceeding. On the same date, the Commission issued a Notice of Availability of the Environmental Assessment for the Proposed Eastleg Expansion Project. We received comments on the EA from ANR and the U.S. Department of the Interior (DOI).

25. ANR commented that they would consider using the dam and pump method, in addition to considering the flume method, for crossing perennial streams. For crossings of intermediate streams, ANR stated they would consider using the dam and pump method, in addition to considering flume and open-cut methods. ANR also clarified that it would cross intermediate and perennial waterbodies in accordance with federal, state and local permits. We believe that adding the dam and pump method as an alternative for stream crossings gives ANR additional flexibility to ensure that water quality and fisheries would be minimally affected during construction.

26. ANR states that it would use hydrostatic test water not only from municipal water sources, as stated in their application, but also potentially from the Fox River. As long as ANR adheres to intake and discharge requirements specified in our staff's Wetland and Waterbody Construction and Mitigation Procedures (Procedures), and to its required federal, state and/or local permits for use of water for hydrostatic testing, we believe that erosional, sedimentation and aquatic impacts from construction activities would still be minimal.

27. ANR did not concur with the EA's environmental condition 11.a which would require ANR in all instances to cover an open trench in a construction work area (CWA) within 50 feet of a residence when construction is not in progress. ANR also did not concur with environmental condition 11.c which requires a description of how it would ensure that the trench is not excavated until the pipeline is ready for installation near

residences that are within 25 feet of the CWA. ANR reasoned that, throughout all residential areas, it would use construction techniques that minimize the amount of time the trench would be left open. ANR stated that it would backfill the trench as soon as practical following pipeline installation near residences within 50 feet of the CWA.

28. The Commission believes substantial effort is warranted to minimize the hazard that extended periods of open trench may pose to nearby residents. In the Patriot Project (CP01-415-000), East Tennessee Natural Gas Company agreed to specific construction measures to shorten the duration that trenches are left open or unprotected when construction occurs within 25 feet of residences. We believe residences would benefit from ANR taking similar reasonable measures before and after trench excavation to minimize the time a trench is open. However, the Commission concludes that the EA's condition 11 relating to the covering of open trenches may be unnecessarily restrictive and burdensome. Therefore, the Commission will modify condition 11 in this instance to require that ANR file a plan which provides (1) that ANR will not excavate near residences that are within 25 feet of a CWA until pipeline is ready for installation and that ANR will backfill the trench immediately after pipeline lowering *or* (2) that ANR will completely cover trenches which must be left open for extended periods with steel plates or timber mats.

29. ANR clarified its understanding of our requirement to provide evidence of landowner concurrence for residences within 10 feet of the CWA to mean that agreements in the form of negotiated agreements would serve as evidence of landowner concurrence. In the event ANR uses legal proceedings for failing to reach agreement with the landowner, it states that the order of the appropriate jurisdictional authority granting ANR property access would supplant the landowner concurrence. The Commission concurs. We note ANR stated in its March 25, 2004 data reply that it would continue to work with each landowner throughout project planning and during construction and restoration. ANR's environmental complaint resolution procedure would enable landowners a way to identify, alert to ANR's attention, and resolve environmental mitigation concerns during construction and restoration of the project.

30. DOI questioned whether or not three years would be sufficient to accurately determine if a wetland restoration has been successful, noting that invasive species often take several years to dominate a wetland. DOI recommended that wetland restoration should not be considered successful if undesirable exotic species are present at the end of three years and have the potential to spread and dominate the area. The Commission believes its definition of successful restoration, contained in our Procedures, is sufficient. Our Procedures requires the cover of herbaceous and/or woody species to be at least 80 percent of the type, density and distribution of the surrounding undisturbed wetland vegetation. In addition, we believe measures contained in our Procedures for assessing

and following up on wetland restoration are sufficient to minimize the chances of takeover by exotic plant species. ANR is required to file with the Secretary a wetland revegetation status report after three years following construction. If revegetation is not successful at the end of three years, ANR would be required to develop and implement a remedial revegetation plan to actively revegetate wetlands, in consultation with a professional wetland ecologist.

31. DOI also commented that native species along open land areas can take a relatively long time to reestablish themselves on disturbed ground. DOI recommended that the composition of restored non-nuisance vegetation, in addition to its density and cover, be taken into account when considering if restored vegetation is similar to that of adjacent undisturbed land. The Commission notes that as long as ANR monitors the success of non-nuisance revegetation in both density and cover in comparison to adjacent undisturbed lands, ANR would in effect be monitoring for species composition.

32. DOI correctly points out that the EA erroneously states that no permanent loss of wooded wildlife habitat would occur from this project. According to ANR's proposed construction, approximately 0.5 acre of forested/woody shrub cover occurring within the permanent ROW would be cleared and then maintained under the mowing procedures described in the Plan. This would represent a minor but permanent loss of forested and woody shrub wildlife habitat.

33. The Commission notes that, in response to DOI's inquiry into which resource agencies ANR would consult regarding long-term impacts to water quality and fisheries resources, ANR has contacted the Wisconsin DNR, the U.S. Fish and Wildlife Service in Wisconsin, and the U.S. Department of Agriculture's Natural Resource Conservation Service in Wisconsin for preparation of construction and resource mitigation measures for this project.

34. Based on the discussion in the EA, the Commission concludes that if constructed and operated in accordance with ANR's application and supplements filed February 27, March 25, April 5, April 21, April 23, June 7, and June 9, 2004, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

35. 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.¹⁸ 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.

36. At a hearing held on July 7, 2004, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, 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 is issued to ANR pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations to construct and operate facilities as described and conditioned herein, and as more fully described in the application.

(B) ANR is granted permission and approval under NGA section 7(b) to abandon by replacement 4.7 miles of 14-inch mainline looping pipeline, as described in this order and more specifically in the application.

(C) The certificate authority in Ordering Paragraph (A) shall be conditioned on the following:

- (1) ANR's completion of the proposed facilities and making them available for service on November 1, 2005 pursuant to paragraph (b) of section 157.20 of the Commission's regulations;
- (2) ANR's compliance with all applicable Commission regulations under the NGA, including paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

¹⁸ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 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., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

- (3) ANR's execution of contracts for the quantities and terms of service represented in the precedent agreements prior to commencing construction;
- (4) ANR's filing with the Commission the necessary tariff sheets or contracts reflecting the negotiated rates, volumes, rate schedules, and applicable receipt and delivery points not less than 30 days, nor more than 60 days, prior to the commencement of service; and
- (5) ANR's compliance with the environmental conditions listed in the appendix to this order.

(D) ANR shall notify the Commission within 10 days of the date of abandonment of the facilities described above.

(E) 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.

(F) Aquila's motion to intervene out of time is granted

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.

Appendix

ANR Pipeline Company Environmental Conditions

As recommended in the EA, this authorization includes the following conditions:

1. ANR shall follow the construction procedures and mitigation measures described in its application and supplements and as identified in the environmental assessment, 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 activities associated with abandonment 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.
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, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility location 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 ROW 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. ANR shall employ at least one environmental inspector. The environmental inspector (EI) 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 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. 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
 - e. responsible for maintaining status reports.
7. ANR shall file updated status reports prepared by the EI with the Secretary on a biweekly 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 the project, 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 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;
 - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by ANR from other federal, state or local permitting agencies concerning instances of noncompliance, and ANR's response.
8. ANR must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the ROW is proceeding satisfactorily.

9. **Within 30 days of placing the certificated facilities in service**, ANR shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions ANR has complied with or will comply with. This statement shall also identify any areas along the ROW where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

10. ANR shall, **prior to construction**, file with the Secretary for review and written approval of the Director of OEP, a copy of its directional drill contingency plan.

11. ANR shall, **prior to construction**, file with the Secretary for review and written approval of the Director of OEP;
 - a. for residences within 50 feet of the CWA, updated site-specific construction plans showing the locations where safety fence would be used;
 - b. for residences within 10 feet of the CWA, evidence of landowner concurrence;
 - c. a plan which provides (1) that ANR will not excavate near residences that are within 25 feet of a CWA until pipeline is ready for installation and that ANR will backfill the trench immediately after pipeline lowering *or* (2) that ANR will completely cover trenches which must be left open for extended periods with steel plates or timber mats.