104 FERC ¶ 61,133
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 25, 2003

In Reply Refer To:
ANR Pipeline Company
Docket No. RP03-529-000

El Paso Corporation
555 11th Street, N.W, Suite 750
Washington, D.C. 20004

Attention: Howard L. Nelson
Senior Counsel

Reference: Assignment and Buy Out of Dakota Gasification Gas Purchase Agreement

Dear Mr. Nelson:

1. On June 25, 2003, ANR Pipeline Company (ANR) filed revised tariff sheets[1] and an executed agreement with BP Canada Energy Marketing Corp. (BP) entitled "Assignment of Gas Purchase Agreement and Permanent Release of Firm Capacity" (Assignment Agreement). Pursuant to the Assignment Agreement, ANR has agreed to buy out its obligation under a Gas Purchase Agreement (GPA) with Dakota Gasification Company (Dakota),[2] and related transportation capacity,[3] by assigning its purchase

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[1]Second Revised Sheet No. 182 and Third Revised Sheet No. 186 to FERC Gas Tariff, Second Revised Volume No. 1.

[2]ANR and Great Plains Gasification Associates (GPGA) were parties to an agreement dated January 29, 1982, under which ANR purchased from GPGA synthetic gas produced from the Great Plains Gasification Plant near Buelah, North Dakota. ANR and Dakota are parties to a February 16, 1994 Settlement Agreement which modified the January 29, 1982 Gas Purchase Agreement.

[3] In order to effectuate deliveries under the GPA, ANR is a party to the following natural gas transportation agreements: (1) Shipper's Service Agreement with Northern Border Pipeline Company (Northern Border) under Contract No. T1004F and (2) Rate Schedule TF Firm Throughput Service Agreement under Contract No. 21624 with

(continued...)

obligations and permanently releasing such transportation capacity to BP. ANR is seeking Commission approval of the buy out and authority to implement a mechanism in its tariff to recover the buy out costs from its shippers. ANR requests an effective date of July 25, 2003, for the revised tariff sheets so that the assignment may occur on August 1, 2003. The revised tariff sheets provide for the recovery of the buy out costs but do not identify the specific amount to be recovered.

2. ANR states that it currently recovers the costs incurred under the Dakota GPA, as modified by the Dakota Settlement, pursuant to Section 28.1(c) of the General Terms and Conditions (GT&C) of its FERC Gas Tariff. Pursuant to this section, ANR makes a quarterly filing to recover its above market costs, as well as associated transportation costs on the systems of Northern Natural and Northern Border. ANR is obligated to purchase Dakota gas under the GPA through July 2009.

3. ANR states that assuming the Assignment Agreement is effectuated on August 1, 2003, the parties have agreed to a buy out cost of approximately $9.5 million. The Assignment Agreement notes that this sum is a good faith estimate of the amount of the payment, and that the actual amount is subject to change by mutual agreement based upon a number of factors that may change from the time this amount was agreed to and August 1.[4] ANR states that it does not contemplate that these factors will result in more than a minor adjustment to the price, if any, assuming Commission approval is obtained in time for an August 1 assignment.[5]

4. ANR states that the buy out payment is based on the contract purchase price of the Dakota gas, which is the Ventura index price less $0.25/Dth. To project future contract purchase prices, ANR resorted to NYMEX prices less a Ventura basis. The sales prices

[3](...continued)
Northern Natural Gas Company (Northern Natural).

[4] These factors include, but are not limited to (1) the purchase price of gas, (2) option costs, (3) the cost of transportation and related fuel, and (4)the effective date of the assignment.

[5] The Agreement also contains alternative buy out payments should the assignment occur in subsequent months. However, the economics of the arrangement, as well as the costs comparison analysis supporting the assignment, are predicated on a August 1 effective date. To the extent the assignment is delayed beyond August 1, ANR states that there is a greater risk that factors, particularly gas prices during the peak summer cooling season, could affect the buy out price.

are also projected by use of the NYMEX prices through July 2009, less the Ventura basis and a purchase discount factor. The buy out payment is also based on the estimated transportation obligations used for shipping the gas under contracts with Northern Natural and Northern Border. These costs are estimated using the current rates under the contracts and the projected increase in Northern Natural rates beginning November 1, 2003, and a similar increase in rates on Northern Border on November 1, 2005.[6] The sum of the estimated purchase and transportation costs results in the total expenses that ANR would incur if it continued to purchase gas for the remaining term of the Dakota GPA.

5. After calculating the total expenses, ANR estimated the total revenues it would obtain from selling the gas, using the same price factors used to calculate the purchase costs and adjusting the estimated sales revenues for the fact that volumes actually delivered are not always consistent. Given a 10 percent historical variance, ANR states it used a 3 percent variance factor, thus overstating the anticipated sales revenues based on the variance in the gas volumes delivered under the contract over the last three years. Subtracting sales revenues from total expenses yields the loss anticipated in each month of the forecast. If no buy out occurs, ANR projects that total above market cost through July 2009 will be $13.8 million. Using a discount factor equal to the current FERC interest rate of 4.25%, ANR calculates the present value of the total above market cost to be $12.7 million. ANR states that assuming approval of the Assignment Agreement effective August 1 with a buy out price of approximately $9.5 million, the buy out will result in savings to ANR's customers of approximately $3.2 million.

6. ANR states that to recover the buy out costs, it proposes to revise the section of its existing tariff that provides for recovery of the Dakota costs. Specifically, ANR proposes to revise the definition of Dakota Costs in Section 28.1(c) of the GT&C to include the buy out costs, and to add a new Section 28.1(c)(8) to provide for the recovery mechanism. ANR proposes to seek recovery of the buy out costs in its next scheduled quarterly filing after the Assignment Agreement is approved and effectuated. If the Assignment Agreement is effectuated on August 1 as contemplated, ANR will include a portion of the buy out costs in its August 31 filing to recover the above market Dakota costs for the period May through July 2003.

7. ANR states that instead of a three month recovery period, as required by the existing tariff, it proposes to allow a twelve month recovery period to spread out the cost

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[6]The ten percent increase actually used in the calculation compares to the thirty percent increase in its actual costs that ANR is projecting based on the Section 4 rate filing made by Northern Natural in Docket No. RP03-398-000.

recovery. The costs to be included in this filing would consist of both the buy out costs and the above market costs incurred in the prior calender quarter of May 2003 through July 2003. At the end of the twelve month period, ANR would true-up any over or under collections through a one-time credit or direct bill, and this filing would be the last Dakota cost recovery filing that ANR would make. The result is to terminate the recovery of the Dakota costs five years earlier than would have otherwise occurred.

8. ANR finally states that the proposed Assignment Agreement is in the public interest because it will reduce the costs paid by ANR's customers for this longstanding obligation to purchase gas from Dakota. The economics of the assignment agreed to by ANR and BP, and in particular the approximate $9.5 million buy out payment, are predicated on the assignment occurring on August 1, 2003.

9. Notice of the filing was issued on July 1, 2003, and comments were due by July 7, 2003. Notice of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2003)). On July 7, 2003, the Wisconsin Distributor Group and NJR Energy Services Company filed motions to intervene and comments in support of ANR's filing. On the same date ProLiance Energy, LLC (ProLiance) filed a motion to intervene, a protest, and a request for a technical conference. SEMCO Energy Gas Company (SEMCO) also filed a protest. On July 16 ProLiance withdrew its protest and on July 17 SEMCO withdrew its protest and states it now supports the proposal. Parties filing timely interventions without comments include Michigan Consolidated Gas Company, the Process Gas Consumers Group, East Ohio Gas Company, Duke Energy Trading and Marketing, L.L.C., BP Canada Energy Marketing Corp., and Rochester Gas and Electric Corporation. Aquila, Inc., Wisconsin Power and Light, and Duke Energy Trading and Marketing and Duke Energy Fuels, L.P, (filing jointly) filed late interventions. Any untimely motion to intervene filed as of the date of this order is granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

10. The Commission concludes that ANR has made a credible showing that the assignment of its obligations under the Dakota GPA to BP and the $9.5 million buy out payment will result in substantial net savings to ANR's customers in comparison to the continued payment of the Dakota Gas surcharge through July 2009. Even if the amount of the buy out payment were to vary slightly as ANR acknowledges it might, the conservative estimates of costs including the low FERC discount rate used to calculate net present value, the anticipated transportation rate increases, and ANR's conservative estimate on the price adjustment factor needed to reflect the reliability of the Dakota gas volumes tendered to ANR tend to understate the potential savings.

11. The Commission further concludes that the one year recovery of the proposed buy out is reasonable. The proposed time frame reduces the present value cost of the transaction to ANR and thus its customers. Moreover, the total costs reflected in ANR's Dakota gas surcharge for the period May 2002 through April 2003 was $10,027,756 in principal plus $243,842 in interest for a total cost of $10,271,598 million. The $9.5 million buy out cost compares favorably with the prior year's above market Dakota costs. Further, ANR's workpapers submitted with the filing show a Dakota costs estimated reservation surcharge to become effective September 1, 2003, of $0.215/Dth which includes the $9.5 million buy out cost. This surcharge compares favorably with the Dakota gas surcharge of $0.212/Dth that was effective March 1 through May 31, 2003.[7]

12. Given the benefits to ANR's customers projected by this filing, the Commission concludes that ANR's proposal is consistent with the public interest. The Commission therefore accepts the Assignment Agreement and the revised tariff sheets effective July 25, 2003, and authorizes ANR to recover the costs of buying out its Dakota obligations pursuant to such Assignment Agreement and the revised tariff sheets listed in footnote 1.

By direction of the Commission.

Linda Mitry,
Acting Secretary.

[7] The Dakota gas surcharge was subsequently lowered effective June 1, 2003, to $0.173/Dth as a result of ANR's quarterly filing to recover above market Dakota costs for February through April 2003.