

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 Nos. RP00-332-004
RP00-332-005
RP00-332-006
RP00-597-003
RP03-182-001

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued September 23, 2003)

1. On April 9, 2003, the Commission issued an order on rehearing and on a compliance filing in this Order No. 637 proceeding (April 9 order).¹ ANR asks for rehearing of the April 9 order with regard to the redesignation of secondary points as primary points in segmented capacity release transactions. As discussed below, the Commission grants rehearing in part and denies rehearing in part.
2. ANR also filed a compliance filing on June 4, 2003, in response to the April 9 order. The compliance filing includes not only revised tariff sheets but also revisions to two provisions of the settlement originally filed in this proceeding on July 10, 2001. The Commission accepts ANR's June 4 compliance filing, subject to modifications, and approves the revised settlement provisions. ANR must file revised tariff sheets, within 15 days of the date of issuance of this order, making changes consistent with the discussion in the body of this order. Therefore, the proposed tariff sheets in the Appendix are accepted effective October 1, 2003, subject to the conditions in this order.
3. This order is in the public interest because it promotes competition and benefits customers by enhancing pipeline transportation services consistent with the Commission's policies under Order No. 637.

¹ Order Denying Rehearing and Accepting Tariff Sheets Subject to Conditions, 103 FERC ¶ 61,022 (2003).

Procedural Background

4. On June 15, 2000, ANR filed pro forma tariff sheets in Docket No. RP00-332-000 to comply with Order No. 637.² On July 10, 2001, ANR filed a Settlement to resolve all issues arising out of its Order No. 637 compliance filing. The Commission's order issued on December 20, 2001, describes at length ANR's operations, the history of this proceeding, and the provisions of the original Settlement.³ In the December 20 order, the Commission generally approved the Settlement, subject to certain modifications and conditions.

5. On January 30, 2002, ANR submitted a modified Settlement as its compliance filing to the December 20 order. ANR also asked for rehearing of the December 20 order. On April 9, 2003, the Commission issued an Order Denying Rehearing and Accepting Tariff Sheets, Subject to Conditions (April 9 order) which denied ANR's requests for rehearing and accepted its January 30 compliance filing, consisting of the modified Settlement, subject to modifications.⁴

6. On May 9, 2003, ANR Pipeline Company (ANR) filed a request for rehearing of the April 9 order. ANR asks the Commission to reverse its decision to remove limitations relating to the conversion of secondary points to primary points in segmented capacity release transactions that were contained in the modified settlement it filed on January 30, 2002.

7. On May 28, 2003, ANR filed revised tariff sheets, together with revisions to two articles of the Settlement, to comply with the April 9 order. On June 4, 2003, ANR filed a correction to proposed Section 2.4(a) of its General Terms and Conditions, Third Revised Sheet No. 99.⁵ ANR states that the revised proposals in these filings represent a further modified settlement it has reached with its customers, with the exception of the provisions dealing with the redesignation of

² Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000 ¶ 31,091 (February 9, 2000); order on reh'g, Order No. 637-A, FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000 ¶ 31,099 (May 19, 2000).

³ 97 FERC ¶ 61,323 (2001).

⁴ 103 FERC ¶ 61,022 (2003).

⁵ The filed tariff sheets are listed in the Appendix to this order.

secondary points to primary points. ANR refers to this redesignation as “elevation.” ANR proposes to revise Article 4.3 of the Settlement to provide that no tariff language allowing such elevation shall be considered part of the settlement, but will be filed and put into effect solely by order of the Commission.⁶ ANR requests an effective date of July 1, 2003, for the tariff sheets that are included in the further revised settlement. But ANR requests a stay of the effectiveness of the tariff language dealing with the elevation of secondary points to primary points, pleading irreparable harm. ANR requests the stay last until the Commission issues its order on rehearing and for a minimum of twenty days from any rehearing order that does not substantially grant rehearing.

Public Notice, Answer, and Comments

8. Public notice of ANR’s compliance filing of May 28, 2003 was issued on June 2, 2003, and public notice of its amended compliance filing of June 4, 2003 was issued on June 6, 2003. Interventions and protests were due as provided in Section 154.210 of the Commission’s regulations.⁷ The Wisconsin Distributor Group filed comments in support of ANR’s compliance filing. As discussed in greater detail below, Duke Energy Trading and Marketing, LLC, and Duke Energy Fuels, L.P. (collectively, Duke) filed an answer opposing ANR’s request for a stay of the provisions concerning elevation of points and asking for clarification of ANR’s compliance filing with regard to priority in overlapping segments and the sufficiency of capacity needed for a secondary point to become a primary point.

Request For Rehearing

9. ANR’s Order No. 637 settlement, as originally filed in July 2001, prohibited temporary replacement shippers from obtaining any primary points other than whatever primary point might be included in the segment released to the replacement shipper. The Commission’s December 20, 2001 Order required ANR either to permit temporary replacement shippers to obtain their own primary points up to their contract demand or to explain why its operational characteristics prevented it from allowing temporary replacement shippers to obtain primary point rights consistent with the Texas Eastern/El Paso policy.⁸ In its January 30,

⁶ See Amendment to Order No. 637 Settlement, Appendix C, Compliance Filing of May 28, 2003.

⁷ 18 C.F.R. § 154.210 (2003).

⁸ Order on Order No. 637 Settlement, 97 FERC ¶ 61,323 at 62,482 (2001).

2002 filing to comply with the December 20 Order, ANR did not offer any operational reason why it could not permit replacement shippers to obtain their own primary points. Rather, ANR proposed to modify its settlement so as to permit replacement shippers to obtain primary points by redesignating secondary points as primary or moving the releasing shipper's primary point.

10. However, ANR proposed to restrict this right in several ways. These included requirements that (1) any primary points obtained by the replacement shipper be within the primary path of the released segment, (2) the new primary point must not change the contractual direction of flows of the releasing or replacement shipper's agreement, and (3) ANR could reserve the right to withhold currently unsubscribed point capacity. In the April 9, 2003 Order, the Commission held ANR could not limit elevation to secondary points within the primary path of the releasing shipper's contract with the pipeline, but must permit replacement shippers to add or change primary points to points outside their primary path but within the zone for which they are paying. It also held ANR could not limit elevation to points that would not change the contractual direction of flow of the releasing or replacement shipper's contract with the pipeline. The Commission held further that ANR could not reserve the right to withhold currently unsubscribed primary point capacity. The Commission required ANR to remove these proposed provisions from its tariff sheets. ANR asks the Commission to grant rehearing with respect to these holdings. For the reasons discussed below, the Commission grants rehearing in part and denies rehearing in part.

Within the path and direction of flow limitations on points that can be elevated

11. ANR has agreed in its Order No. 637 settlement to permit releasing shippers to release segments that are outside their primary path, so long as they are within the rate zones for which the releasing shippers pay.⁹ Thus, the issue raised by ANR's rehearing request is not whether outside-the-path segmentation will be permitted on ANR's system. Rather, the issue is whether ANR must permit replacement shippers to obtain primary points for such outside-the-path segments, including primary points that change the contractual direction of flow.¹⁰

⁹ ANR refers to its rate zones as rate segments.

¹⁰ The Commission has held that such reverse flow transactions are outside a shipper's primary path.

12. While the Commission's December 2001 Order on ANR's Order No. 637 settlement permitted ANR to provide operational reasons for limiting the rights of temporary replacement shippers to obtain primary points, ANR did not set forth any such reason in its January 30, 2002 filing to comply with that order. Therefore, the April 9 Order required ANR to give replacement shippers the full panoply of rights to request primary points in connection with segmented transactions we have required on other pipeline systems, including the right to request primary points for outside-the-path transactions.

13. In its current rehearing request, however, ANR has supplied a fuller discussion of its system, and, in particular, of the operating characteristics of its market area. ANR's primary contention is that the Commission should not require it to permit replacement shippers to obtain outside-the-path primary points in the market area due to the reticulated nature of that part of its system. Citing Appendix D of its June 15, 2000 filing, ANR describes its market area as reticulated. Reduced to its simplest terms, ANR's system in the market area is a U shape, with the two upper portions of the U extending northward on either side of Lake Michigan.¹¹ It has connections to Great Lakes Gas Transmission LP (Great Lakes) and Michigan Consolidated Gas Company (MichCon). The connections with Great Lakes are on both sides of Lake Michigan and make the connected pipeline into a circle around the Lake. The connections with MichCon connect the two northernmost extensions of ANR in Michigan and make them into a square.¹² In its submission of June 15, 2000, ANR stated that its system operates in an integrated manner with the Great Lakes and MichCon systems.¹³ It also stated that

¹¹ In the market area, ANR's system extends north on both sides of Lake Michigan. The southwest leg splits into two branches at the Sandwich compressor station, with one going up the west side of Lake Michigan in Illinois and the other branch going up the east side of Lake Michigan in Michigan. These branches form a Y shape. The southeast leg of ANR extends into Michigan parallel to and east of the branch from the southwest leg that extends into Michigan. The two parallel branches in Michigan are connected by an east-west lateral in the southern portion of the market area.

¹² See Appendix D to the June 15, 2000 filing in this docket for information describing ANR's physical configuration.

¹³ "7/27/95 Page 8," "Appendix B," Appendix D, Filing of June 15, 2000. Although the Appendix D materials were created in 1995, ANR stated that the operational conditions explained in that presentation remained true at the time it made its June 15, 2000 filing. Letter of Transmittal of June 15, 2000 at 3 n.5.

firm deliveries are effectuated through a combination of exchange, displacement, and backhaul. Deliveries depend on the ability to divert gas. ANR stated that it depends on receiving gas at specific locations in the market area to ensure deliveries¹⁴ and that, in the winter, some portions of the market area do not have the physical capacity to meet service obligations, but depend on displacements and exchanges. ANR stated that flows in this area are multi-directional and that day-to-day deliveries do not follow a single predictable path. ANR stated that the Primary Route in the market area is an assumed contract path, not an actual one.

14. ANR's primary concern with allowing replacement shippers to obtain primary points on out-of-path segments in its reticulated market area is the effect on its ability to market its primary capacity. ANR gives several examples of the effect of unrestricted elevation in the market area which are due, in part, to this configuration. In these examples, a shipper with primary points on one side of Lake Michigan releases capacity on the other side of Lake Michigan, or capacity that goes from one side to the other side of Lake Michigan.¹⁵ The replacement shipper then elevates the points it receives to primary status. The result, asserts ANR, is that it is unable to sell unsubscribed capacity in the portion of the system where the release has taken place. ANR also asserts that shippers can control capacity in this manner and game the system. ANR asserts the Commission should take these economic effects into consideration as well as the operational difficulties of segmentation on a reticulated system. ANR is also concerned that firm segmentation in the market area would cause the system to fail on certain days, including peak days.¹⁶

¹⁴ The need for deliveries at Marshfield is described in Docket No. CP00-391-000.

¹⁵ ANR's examples include a shipper with capacity from storage in Michigan to Lebanon, Ohio, on the east side of the Y who releases capacity from Crystal Falls to Milwaukee, both points on the west side of the Y. Another ANR example consists of a shipper with capacity from the Southeast Headstation (the Eunice compressor station in Louisiana, a pooling point) to Willow Run in the market area on the east side of Lake Michigan (No. 69 on the map attached to ANR's rehearing request) who releases capacity from Joliet to Green Bay (No. 189 on the rehearing request map), both points on the west side of the Y.

¹⁶ "7/27/95 Page 11" – "7/27/95 Page 17," "Appendix B," Appendix D, Filing of June 15, 2000.

15. The Commission finds that the reticulated nature of ANR's system in the market area¹⁷ can give rise to operational concerns with respect to allowing replacement shippers to obtain primary points on outside-the-path segments that do not exist on non-reticulated, straight-line systems. On a straight-line system, a shipper may have a primary contractual path that encompasses all the facilities in a rate zone, for example where its primary receipt point is at the upstream most point in the zone and its primary delivery point is at the downstream most point. When such a shipper releases a segment of that capacity, its replacement shipper is entitled, under the Texas Eastern/El Paso policy, to obtain its own primary points on any such segment, subject to the availability of capacity and subject to any limits the releasing shipper may have placed on changing existing primary points on the released segment. Other shippers may have primary paths that do not encompass the entire rate zone, yet they are subject to the same maximum rate as the first shipper. Thus, like the first shipper, they help pay for the costs of the entire rate zone. In these circumstances, the Commission has held that such shippers should be able to release segments throughout the zone, including segments outside their primary path, and their replacement shippers should be entitled to the same rights to obtain primary points on their released segment as replacement shippers taking releases from a shipper with a primary path that encompasses the entire zone. This gives all shippers in the zone similar release rights and reflects the fact that all are paying rates based on the costs of the entire zone.

16. However, in a rate zone where the system is reticulated, such as ANR's market area, no single shipper can have a primary contractual path that encompasses all the facilities in the rate zone. Thus, there can be no shipper that can make segmented within-the-path releases throughout the zone, as on a straight-line system. And a shipper's outside-the-path segmented releases may be in areas of the system that have little connection to the assumed contractual path of the shipper. For example, a shipper whose contractual path is entirely on the western side of Lake Michigan may make an outside-the-path segmented release on the eastern side of Lake Michigan. In these circumstances, we find that ANR can reasonably restrict such outside-the-path releases to a secondary basis. Allowing outside-the-path releases in the reticulated market area, but prohibiting them from being elevated to primary status, appropriately balances the interests of allowing releasing shippers to release capacity in competition with the pipeline's own sale of capacity while still recognizing the pipeline's interest in being able to market its capacity. However, this holding is limited to the ANR's reticulated

¹⁷ In this order, our references to market area are to ANR's Rate Segment ML-7.

market rate zone. The remainder of ANR's system is not reticulated, and therefore ANR must not only allow outside-the-path segmentation on those parts of its system, but must allow replacement shippers to seek primary points on such segments.

17. This result is consistent with the Commission's holdings in other cases involving reticulated systems. As ANR indicates, in National Fuel Gas Supply Corp.,¹⁸ the Commission permitted the pipeline to restrict segmentation to points within the primary path, once a pipeline had chosen primary points. National Fuel's system is a web-like system consisting of 3,065 miles of pipeline and 33 storage fields within a 125-mile radius in western New York and northwestern Pennsylvania. It interconnects with interstate pipelines at 41 locations and with TransCanada PipeLines Ltd. It also interconnects with two intrastate or Hinshaw pipelines and receives Appalachian gas at many points. Gas may flow in either direction through many of National Fuel's pipelines depending on market conditions, storage operations, and the supply sources selected by shippers.¹⁹ On National Fuel, a shipper may request new primary points anywhere on the system. Once a shipper has primary points, however, it is restricted to segmenting within its primary path. That is, it cannot use secondary points outside the primary path for segmentation²⁰

18. In Texas Gas Transmission Corp.,²¹ the Commission permitted the pipeline to impose limitations on segmentation in portions of its system. The portions of Texas Gas's system subject to limitations are several market laterals extending off the mainline. The market laterals are similar to reticulated systems in that they have bi-directional flows and storage facilities are located along them where gas is injected and withdrawn. The Commission found that shippers segmenting on Texas Gas's market lateral outside the contract path could be subject to limitations due to the reticulated nature of these portions of Texas Gas's system. Thus segmenting shippers on Texas Gas's market laterals are subject to the one-foot-in-bounds rule which requires that either a receipt or delivery point must be within the contract path and to the LUQ rule which provides that, in other cases, a shipper

¹⁸ 96 FERC ¶ 61,182; 97 FERC ¶ 61,104 (2001).

¹⁹ 96 FERC ¶ 61,182 at 61,803.

²⁰ 96 FERC ¶ 61,182 at 61,806-07; 97 FERC ¶ 61,104 at 61,546.

²¹ 101 FERC ¶ 61,359 (2003).

segmenting outside its primary path may only schedule volumes in excess of its MDQ within the zone as authorized overrun volumes.²²

19. ANR's market area has characteristics similar to those of National Fuel and the market laterals on Texas Gas. Consequently, the Commission grants rehearing with regard to points that may be elevated to primary points in ANR's market area. The Commission finds that ANR is a reticulated system in its market area with a web-like configuration and multi-directional flows. The Commission finds the proposed restrictions in its market area on points that may be elevated, namely that these points must be within the contract path and must not change the direction of the contract flow, are reasonable given the reticulated nature of the market area. These limitations are consistent with the limitations the Commission has permitted in National Fuel and Texas Gas with regard to segmentation and flexible receipt and delivery points.

Reservation of point capacity

20. In its modified Settlement of January 30, 2002, ANR included the following proposal in its capacity release provisions that would allow it to retain point capacity:

Transporter, in its reasonable discretion, shall have the right to reserve adequate Primary Receipt and Delivery Point capacity to provide the opportunity for Transporter to sell associated unsubscribed mainline capacity.²³

The Commission rejected this provision in the April 9 Order.²⁴

21. ANR asks rehearing with regard to its ability to reserve point capacity. ANR relies on a footnote in Order No. 637-A in which, it asserts, the Commission

²² Under the LUQ rule, the volumes in a segmented transaction outside the primary path are added to the shipper's highest use of capacity on any segment within the path in the same rate zone. Any volumes that exceed the shipper's daily contract demand within the rate zone will only be scheduled as authorized overrun service. 101 FERC ¶ 61,359 P 15 (2002).

²³ Section 21.1(a)(5)(iv), First Revised Sheet No. 154A.

²⁴ 103 FERC ¶ 61,022 P45.

stated that a pipeline that was not fully subscribed could protect its ability to sell available mainline capacity by reserving a percentage of the receipt or delivery point capacity associated with unsubscribed mainline capacity.²⁵ ANR asserts it relied on this statement in formulating its Order No. 637 settlement and that the April 9 Order is contrary to this assurance in Order No. 637-A because the April 9 Order does not permit ANR to reserve primary point capacity. ANR asserts the Commission must provide an explanation for its departure from the policy set forth in this statement from Order No. 637-A. ANR also asserts the Commission has not protected ANR's ability to sell mainline capacity and that it must provide a reasonable explanation for this failure or be adjudged arbitrary and capricious.

22. The Commission denies rehearing on the issue of retention of point capacity. The statement that ANR quotes from footnote 121 of Order No. 637-A was part of a discussion of the Commission's policy on segmentation and primary points. In that discussion, the Commission pointed out that in its orders in pipelines' Order No. 636 restructuring proceedings, the Commission had permitted pipelines to continue historic limitations that limited primary point rights to the same level as the shipper's mainline contract demand, so long as the releasing and replacement shippers were treated as separate shippers, each entitled to primary points up to its contract demand (the Texas Eastern/El Paso policy). However, the Commission also pointed out that in the Order No. 636 restructuring proceedings, "[t]he Commission questioned whether it continued to be appropriate for pipelines to limit receipt and delivery point quantities to the shipper's contract demand," while recognizing "that pipelines might need to impose some restrictions on primary point rights, as appropriate to the circumstances of their system to prevent hoarding of capacity by some shippers to the detriment of others."²⁶

23. Order No. 637-A then stated that flexibility in the selection of primary points in segmented releases can be important to creating effective competition between pipeline services and released capacity. If replacement shippers were limited to the use of segmented points on a secondary basis, the pipeline would retain the right to sell the point capacity on a primary basis and would thus have a competitive advantage over segmented release transactions. The Commission concluded that, "because the Commission has not reviewed receipt and delivery point restrictions since Order No. 636 and restrictions of segmentation and point

²⁵ Order No. 637-A at 31,594 n. 121.

²⁶ Id. at 31,593.

rights can limit effective competition, pipelines should not be able to continue to rely upon their historic tariff practices dating back to the days of merchant service, but need to justify restrictions on shippers' ability to use additional primary points in segmented transactions and any deviation from the Texas Eastern/El Paso policy."²⁷ The Commission indicated through an example that a fully subscribed pipeline with receipt point capacity many times its mainline capacity would probably not be able to justify restrictions on additional primary point capacity. In the footnote to which ANR refers, the Commission mentioned the possibility that, where a pipeline was not fully subscribed, it could reserve a percentage of point capacity associated with unsubscribed mainline capacity to protect its ability to sell available mainline capacity.

24. Thus, the basic thrust of the discussion in Order No. 637-A on which ANR relies was that, in the individual proceedings to comply with Order No. 637, the parties should consider whether pipelines should be required to give shippers the right to obtain greater primary point rights than the Commission had required in the Order No. 636 restructuring proceedings. Since the Commission had already established the Texas Eastern/El Paso policy in the Order No. 636 restructuring proceedings, this meant giving shippers the right to reserve greater primary point rights than under the Texas Eastern/El Paso policy, for example allowing each shipper to reserve primary points in excess of its contract demand. Therefore, the suggestion that pipelines could reserve a percentage of point capacity associated with unsubscribed mainline capacity was intended as a suggestion of something that might be done to limit shipper hoarding of point capacity in conjunction with allowing shippers the ability to reserve greater primary point capacity than their mainline contract demand.²⁸

25. However, the Commission stated that the resolution of issues relating to the allocation of primary point rights in segmented transactions would have to be addressed in each pipeline's Order No. 637 compliance filing.²⁹ The Commission made no determinations with regard to individual pipelines' allocation of primary points in the Order No. 637 rulemaking proceeding. Subsequently, in examining and ruling on pipelines' individual Order No. 637 filings, the Commission

²⁷ Order No. 637-A at 31,594.

²⁸ See the discussion in El Paso, 62 FERC ¶ 61,311 at 62,982-3, to which Order No. 637-A referred when it suggested that pipelines might need to impose some limits to prevent hoarding of primary point capacity.

²⁹ Order No. 637-A at 31,595.

maintained its concern with the pipelines' ability to sell unsubscribed capacity. As the Commission stated in Natural Gas Pipeline Company of America, 103 FERC ¶ 61,174 P 18 (2003), it has established policies that ensure that pipelines retain a reasonable ability to market their capacity. These policies establish a reasonable balance between the need to enhance competition by providing replacement shippers with the right to obtain primary points and the pipeline's interest in selling available firm capacity.

26. Most significantly, despite the suggestion in Order No. 637-A that consideration be given to allowing shippers to reserve greater primary point rights than their mainline contract demand, the Commission has permitted pipelines to retain these limits, subject only to compliance with the Texas Eastern/El Paso policy, so that if a shipper does change to another primary path, the pipeline could require the shipper to give up existing primary points. Second, replacement shippers can obtain primary points only when those points are available and those points revert to the pipeline for sale at the expiration of the release. Third, if a replacement shipper obtains primary points by changing the releasing shipper's primary points, the change is permanent and the pipeline can sell the newly available capacity at the original primary points to new shippers. Finally, the Commission has allowed pipelines to use the net present value (NPV) method to allocate point capacity and has treated the bid of an existing shipper (including a replacement shipper) to change to another primary point without increasing its reservation charge as having an NPV of zero, in contrast to the bid of a new shipper bringing new revenue to the pipeline.³⁰ This ensures that bids providing additional revenues to the pipeline will have priority over point changes by replacement or other existing shippers.

27. ANR is already protected by most of these policies and now by the limitations it may place on the use of elevated points in its market area. The Commission has here already approved ANR's proposal to limit the primary point capacity of replacement shippers to their mainline contract demand.³¹ So replacement shippers will not acquire primary point capacity on ANR in excess of their contract demand. In addition, replacement shippers can only obtain primary points on ANR when those points are available and points that are redesignated

³⁰ Process Gas Consumers Group v. FERC, 292 F.3d 381 (D.C. Cir. 2002), aff'g Tennessee Gas Pipeline Co., 94 FERC ¶ 61,097 (2001), 91 FERC ¶ 61,053 (2000); ANR Pipeline Co., 97 FERC ¶ 61,322 (2001).

³¹ 103 FERC ¶ 61,022 P 45.

from secondary points to primary revert to the pipeline for sale at the expiration of the release.³² Third, if a replacement shipper obtains primary points on ANR by changing the releasing shipper's primary points, the change is permanent and ANR can sell the newly available capacity at the original primary points to new shippers.³³ In this order, the Commission has also permitted ANR to limit the elevation of secondary points to primary points by replacement shippers in its market area. Last, ANR could implement the NPV method to allocate point capacity and treat the bid of an existing shipper, including a replacement shipper, to change to another primary point without increasing its reservation charge as having an NPV of zero.

28. The Commission finds these measures are adequate to protect ANR's ability to market its capacity. In light of the fact the Commission has not required pipelines to permit individual shippers to reserve capacity in excess of their mainline contract demand as it suggested it might do in Order No. 637-A, the Commission has not permitted pipelines to reserve unsubscribed point capacity and it does not see any reason to implement that policy here. Consequently, the Commission denies ANR's rehearing request regarding the reservation of point capacity.

Compliance Filings

29. After the April 9, 2003 Order, ANR filed notice pursuant to Article V of the Settlement originally filed in July 2001 that the changes required by the April 9 Order had a material adverse effect on ANR and the Settlement. ANR stated that it would meet with its customers on May 8, 2003 in an attempt to negotiate a modification of the Settlement that would comply with the April 9 Order and preserve the Settlement's mutual benefits for ANR and the other parties. On May 28, ANR submitted its compliance filing, including both a modification of the Settlement and revised tariff sheets to comply with the April 9 Order.

³² See Section 21.1(a)(5)(iv), First Revised Sheet No. 154A; 103 FERC ¶ 61,022 P 34. At the end of the release, the replacement shipper's primary points that were redesignated from secondary points during the release revert to secondary points. The pipeline can then sell them as primary points.

³³ The precise tariff language governing when replacement shippers may change the releasing shipper's primary point is discussed below in the compliance filing portion of this order. See prior discussion at 103 FERC ¶ 61,022 P 49.

Settlement Amendments

30. ANR proposed to modify Article III of the Settlement, and add two sentences to Article 4.3. As modified, Article III specifies that all parties including ANR may propose changes to the tariff language that implements the settlement, except for the following limits on the changes that ANR may propose. For three years, ANR may not propose changes to those aspects of the settlement tariff language that provide that (1) ANR will not inhibit access to third party storage and imbalance management services, and (2) shippers will have three additional intra-day nomination opportunities for points located in the Northern segment. In addition, ANR may propose changes to comply with a Commission order or to implement changes that result from the task force proceedings described in Appendix C of the Settlement. The revision to Article 4.3 specifies that tariff language permitting replacement shippers to redesignate secondary points to primary points is not part of the settlement, and is filed and put into effect solely by order of the Commission.

31. As part of the settlement, ANR also proposes a change to its proposed tariff language which was not required by the Commission's April 9 Order, but which the parties agreed to when they renegotiated the underlying Settlement. ANR proposes to amend Section 10.3 of the GT&C to eliminate a shipper's ability to overlap some secondary nominations on mainline segments by netting the physical flows. As revised, Section 10.3(b) provides that if the sum of the nominations on an overlapping segment exceed the firm entitlements of the releasing shipper's underlying contract, the releasing and/or replacement shipper must notify ANR as to which quantities shall be treated as a firm nomination and which shall be treated as an authorized overrun nomination. In the absence of such notice, ANR shall treat the nomination of the releasing shipper as the nomination entitled to firm priority status.

32. Wisconsin Distributor Group filed comments supporting these changes to the Settlement. No party has filed comments opposing these changes to the Settlement. However, Duke Energy Trading and Marketing, L.L.C. and Duke Energy Fuels, L.P. (Duke) filed a request for clarification of revised Section 10.3(b). Duke argues that, as revised by ANR, this provision could be read as permitting the releasing shipper to override ANR's scheduling priorities, even when a replacement shipper's nomination is a higher priority than the releasing shipper. Duke gives as an example a situation where the replacement shipper tenders a primary firm nomination and the releasing shipper submits a secondary point nomination. Duke requests that the Commission clarify that ANR must schedule service according to ANR's general scheduling provisions, honoring the

relative priorities of each shipper, and only use the Section 10.3(b) procedures where the releasing and replacement shippers' nominations have equal priority.

33. The Commission grants Duke's request for clarification in part. As discussed in Viking Gas Transmission Co., 101 FERC ¶ 61,362 at P 16-18 (2002), the releasing shipper may as a condition of its release establish the relative priority between it and the replacement shipper in overlap situations. Where the releasing shipper does this, it may establish a relative priority that is different from that which would otherwise apply under ANR's tariff. However, the pipeline's tariff should also provide for a default priority, where the releasing shipper has not included a condition in its release. The default priority should only apply to overlapping nominations of equal priority. ANR's proposed default priority is that to treat the nomination of the releasing shipper as having priority. However, its proposed tariff language does not make clear that this default priority only applies where the releasing and replacement shippers' nominations have equal priority. Therefore, the Commission requires that ANR revise Section 10.3(b) to make this clear.

34. Subject to the above required clarification of Section 10.3(b), the Commission accepts the amendments to the Settlement as fair and equitable and in the public interest.

Compliance with April 9 Order

35. ANR also filed revised tariff sheets to comply with the Commission's April 9 Order. In addition to the tariff sheets necessary to effectuate changes required by the Commission in its April 9 Order, ANR has filed and renumbered all tariff sheets which were accepted by the Commission's April 9 Order to be effective May 1, 2003. The sheets which were accepted by the April 9 Order were filed on January 30, 2002, and in the intervening time, additional changes to these sheets have been approved by the Commission in other proceedings. Therefore, ANR requests that the sheets filed on January 30, 2002 be considered withdrawn or rejected. The Commission accepts the sheets filed on May 28, 2003, to be effective October 1, 2003. Therefore, it is not necessary to reject or treat as withdrawn, those sheets contained in ANR's January 30, 2002 filing, since they have been superseded by the sheets contained in the May 28, 2003 filing.

36. In compliance with the April 9 Order, ANR revised its tariff to delete from Section 21.1(a)(5) of the General Terms and Conditions (GT&C): (1) the restriction that only secondary points within the released segment of the primary route of the releasing can be redesignated as primary points; (2) the restriction that

a request to redesignate a secondary point as a primary point cannot result in a change in directional flow; and (3) the provision that would have permitted ANR to reserve currently unsubscribed primary point capacity. While these revisions are in compliance with the Commission's April 9 Order, the Commission above has granted rehearing to permit ANR to limit replacement shippers' ability to elevate outside-the-path secondary points to primary status, including points used for reverse flow transactions, so that right exists only on the portions of ANR's system outside the reticulated market area rate segment. Therefore, ANR may file revised tariff sheets within 30 days to reflect the Commission's ruling on rehearing.

37. In its first order on ANR's filing to comply with Order No. 637, the Commission stated that a releasing shipper can protect itself from the potential loss of a primary point that might result if the replacement shipper changed a primary point by including a condition in its release prohibiting the replacement shipper from changing the releasing shipper's primary points. Several parties expressed the concern that a releasing shipper might inadvertently fail to include such a provision in the release, and thus, lose its primary points. Those parties requested that the Commission rule that, in cases where the release is silent, the default will be that changes in primary points are not permitted. In response, the April 9 Order stated that it would be reasonable to adopt as the default either (1) a provision requiring releasing shippers to affirmatively grant replacement shippers the right to change points or (2) a provision that the right to change points is granted unless the releasing shipper affirmatively restricts the replacement shipper's right to do so. The Commission ruled that ANR may choose either default, but must include in its tariff a clear description of the rights of the parties under the default it chooses. In compliance with this directive, ANR revised Section 21.1(a)(5) to provide that replacement shippers may request a change in primary receipt and delivery points "(w)ith the prior consent of the Releasing Shipper, as expressed in the capacity release notice". This revision is in satisfactory compliance with the Commission's directive.

38. Duke also has requested clarification of the provision in Section 21.1(a), which specifies that a replacement shipper will not be permitted to elevate a secondary point to a primary point "if such elevation impacts the Primary Point capacity rights retained by the Releasing Shipper." Duke states that this language is too broad, arguing that it could be construed to deny a replacement shipper's elevation request in its entirety, even if there was sufficient primary capacity at the point to grant the request in part. Duke is also concerned that the prospect of pro rata curtailment of both the releasing and replacement shippers at the point could be considered an adverse "impact" justifying rejection of the replacement

shipper's elevation request. The Commission requires ANR to clarify this tariff language so that it is clear that, to the extent there is primary capacity available at the point the replacement shipper seeks to elevate, ANR must permit the elevation from primary to secondary point status.

39. In its April 9 Order, the Commission also directed ANR to revise Section 2.4 of its GT&C to clarify that (1) primary shippers, including permanent replacement shippers, may request discounted rates at changed primary points and such discounts will be granted on a not unduly discriminatory basis, and (2) temporary replacement shippers will not be subject to any change in rate as a result of obtaining a primary point pursuant to Section 2.4. ANR revised Section 2.4 of the GT&C to permit permanent or temporary replacement shippers that request to either change primary points or elevate secondary points to primary points to transfer a discount to the new point when a similarly situated shipper with a discount is at the new point. The revision also provides that, in the case of a temporary replacement shipper requesting a change in point, ANR will notify the releasing shipper of the request, and the request will be subject to the terms of the release agreement. The Commission finds that these changes comply with the requirements of the April 9 order.

40 On June 4, 2003, ANR filed a revised tariff sheet in Docket No. RP00-332-006 to correct an inadvertent error on the corresponding sheet filed on May 28. The Commission accepts the sheet filed on June and renders moot and rejects the sheet filed May 28, as reflected in the Appendix.

Motion For Stay

41. ANR moved to stay of the effectiveness of the tariff language concerning the elevation of secondary points to primary points until the Commission issues its order on rehearing and for a minimum of twenty days from any rehearing order that does not substantially grant rehearing. The Commission finds that ANR's motion for a stay is moot. Since the rehearing requests and compliance filing are being acted on simultaneously, there is no interval of time when the compliance order would take effect prior to the issuance of the rehearing order. In addition, the Commission has substantially granted ANR's requests for rehearing with regard to the elevation of secondary points to primary points so that the objections to which the motion relates no longer exist. Consequently, ANR's motion for a stay is dismissed as moot.

The Commission orders:

(A) The requests for rehearing are granted or denied as discussed in the body of this order.

(B) The tariff sheets listed in the Appendix are accepted to be effective October 1, 2003, subject to the conditions of this order.

(C) ANR is directed to file revised tariff sheets consistent with the discussions in this order within 15 days of the date of this order.

(D) ANR's motion for stay is dismissed as moot.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX

Tariff Sheets Accepted Effective October 1, 2003

FERC Gas Tariff, Second Revised Volume No. 1

3rd Rev Twelfth Revised Sheet No. 2
Second Revised Sheet No. 75A
Substitute Third Revised Sheet No. 99
Fifth Revised Sheet No. 102
Fifth Revised Sheet No. 103
Fourth Revised Sheet No. 114
Fifth Revised Sheet No. 117
1st Rev First Revised Sheet No. 117A
Second Revised Sheet No. 117B
Fifth Revised Sheet No. 119
Fourteenth Revised Sheet No. 120
First Revised Sheet No. 120A
1st Rev Fourth Revised Sheet No. 122
Third Revised Sheet No. 122A
Fourth Revised Sheet No. 123
1st Rev Fourth Revised Sheet No. 137
First Revised Sheet No. 137.01
Fifth Revised Sheet No. 149
First Revised Sheet No. 149.01
Twelfth Revised Sheet No. 149A
Fifth Revised Sheet No. 150
Ninth Revised Sheet No. 153
Fifth Revised Sheet No. 153A
Fifth Revised Sheet No. 154
Third Revised Sheet No. 154A
Second Revised Sheet No. 154B
Original Sheet No. 154C
Fourth Revised Sheet No. 157
Second Revised Sheet No. 157A
Sixth Revised Sheet No. 158
Seventh Revised Sheet No. 159
Ninth Revised Sheet No. 161
Fifth Revised Sheet No. 161A
Sixth Revised Sheet No. 161A.02
Third Revised Sheet No. 161A.03

Docket No. RP00-332-004, et al.

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Sixth Revised Sheet No. 162
First Revised Sheet No. 162.01
Original Sheet No. 162.02
Original Sheet No. 162.03
Ninth Revised Sheet No. 191
Second Revised Sheet No. 191A
First Revised Sheet No. 191B

Tariff Sheet Rendered Moot and Rejected

FERC Gas Tariff, Second Revised Volume No. 1

Third Revised Sheet No. 99