

139 FERC ¶ 61,049
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

ANR Pipeline Company

Docket No. CP11-539-000

ORDER ISSUING CERTIFICATE

(Issued April 19, 2012)

1. On August 23, 2011, ANR Pipeline Company (ANR) filed an application under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for a certificate of public convenience and necessity authorizing it to construct and operate the Marshfield Reduction Project (MRP). The project consists of one new compressor station and appurtenant facilities in Portage County, Wisconsin. ANR also requests a predetermination that it may roll the costs associated with the MRP into its system rates in a future NGA section 4 rate case. This project is intended to address long standing issues on ANR's Wisconsin system going back to 1992 when ANR performed a merchant function.

2. For the reasons discussed below, the Commission will grant the requested certificate authority as modified and conditioned in this order, as well as the request for a predetermination of rolled-in rate treatment.

I. Background

3. ANR, a corporation organized and existing under the laws of Delaware, is a natural gas pipeline company within the meaning of NGA section 2(6), engaged in the business of transporting natural gas in interstate commerce. ANR's system consists of two large trunklines transporting gas primarily northward from producing areas in the Gulf of Mexico and the Texas-Oklahoma Panhandle to, respectively, Northeast Ohio and Northern Illinois. Both trunklines connect downstream with ANR's Northern Segment, a web-like transportation and storage system characterized by multi-directional gas flows that spans Wisconsin, Michigan, and the northern parts of Ohio and Illinois. ANR also owns or leases multiple storage fields in Michigan as part of the Northern Segment, which have historically been operated by ANR as a pool. The Northern Segment interconnects with several interstate pipelines, in particular Viking Gas Transmission

Company (Viking) and Great Lakes Gas Transmission Company (Great Lakes) in Wisconsin. ANR's Wisconsin customers can potentially source gas delivered into ANR's Michigan storage pool from pipelines interconnected with ANR in the northern and western portions of the Wisconsin system (Viking and Great Lakes), from pipelines interconnected with ANR's Joliet Market Hub just south of the Wisconsin system in Illinois near Chicago, and from receipt points on ANR's trunklines.

4. Historically, ANR has relied on displacement and exchange activity to meet a significant portion of its firm winter delivery obligations in Wisconsin, in part due to capacity constraints in the southern part of the state. In order to perform deliveries as a gas merchant in western Wisconsin prior to Order No. 636,¹ ANR held capacity upstream on Viking and received gas onto its system through the ANR/Viking interconnection near Marshfield, Wisconsin (Marshfield Interconnection), for subsequent delivery to its customers in the western part of the state.² ANR states that the Viking capacity gave ANR the operational reliability and flexibility to meet all of its winter firm delivery obligations in western Wisconsin. According to ANR's application, "[the Viking] contractual arrangement effectively provided an operational loop of ANR's Wisconsin system by allowing displacement of north flowing volumes in the State of Wisconsin."³

5. After Order No. 636, during ANR's restructuring proceeding, ANR proposed to retain firm capacity that it held upstream on Viking's system for operational purposes, instead of assigning that capacity to ANR's customers as required by Order No. 636.

¹ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

² The area of ANR's Wisconsin system most reliant upon receipts from Viking is referred to as the Marshfield Affected Area. This area encompasses those markets that ANR physically serves with gas sourced from the Marshfield receipt point, gas that ANR compresses and delivers through ANR's Weyauwega compressor station in the Northern Segment, and, since the construction of the NorthLeg Project, as discussed below, with gas sourced from Great Lakes.

³ ANR's Application at 3. ANR also notes that the arrangement provided additional access to Canadian supplies that, at the time, was more economical than constructing facilities to transport domestic supplies from Chicago.

ANR asserted that certain minimum flow levels were required for gas entering its system from Viking at the Marshfield Interconnection to preserve its system integrity, and that implementation of the Order No. 636 assignment requirement would have compromised its operational ability to maintain the historical reliability and flexibility of deliveries to its customers in Wisconsin. The Commission permitted ANR to retain its capacity on Viking for a two-year transition period, after which the Commission required ANR to assign the capacity to its customers.⁴

6. After several unsuccessful attempts to resolve problems associated with its service to its Wisconsin customers, ANR entered into a multi-party settlement in 2001 with Viking and certain ANR customers (Viking Settlement) that facilitated gas deliveries at the Marshfield Interconnection during the winter season. The Viking Settlement also provided a transition period through October 31, 2006, for ANR to gradually reduce its reliance on Marshfield receipts, either by building replacement capacity or by making other arrangements.⁵

7. ANR states that during the transition period afforded by the Viking Settlement, steps were taken to address its need, at the time, for approximately 208,000 dekatherms per day (Dth/d) of winter period receipts at the Marshfield Interconnection. For example, in 2004, the Commission authorized ANR to construct the NorthLeg Project, which increased the physical capacity of ANR's Wisconsin system by adding 6,000 horsepower (hp) of compression at the Weyauwega Compressor Station on ANR's Northern Segment in the middle of the state.⁶ According to ANR, the NorthLeg Project enabled it to physically deliver to its customers in western Wisconsin an additional 107,217 Dth/d of gas from receipt points other than Marshfield, in anticipation of an October 2005 shortfall of firm winter receipts at the Marshfield Interconnection due to contracts which were expiring under the Viking Settlement.⁷ The NorthLeg Order included a predetermination favoring rolled-in rate treatment of the project's costs based on a finding that ANR's existing customers would benefit from the increased system reliability and flexibility created by the project. The Commission noted that under the Certificate Policy Statement⁸ "increasing the rates of existing customers to pay for improvements to benefit

⁴ See *ANR Pipeline Company*, 64 FERC ¶ 61,140 (1993).

⁵ *ANR Pipeline Company*, 95 FERC ¶ 63,019 (2001) (Certification of Uncontested Offer of Settlement); *Viking Gas Transmission Company*, 95 FERC ¶ 61,456 (2001) (Letter Order Approving Settlement).

⁶ *ANR Pipeline Company*, 107 FERC ¶ 61,250 (2004) (*NorthLeg*).

⁷ ANR's NorthLeg Application at 5.

existing customers is not a subsidy, and the costs of projects to provide such benefits may be rolled-in.”⁹

8. Also in 2004 and in anticipation of contracts expiring under the Viking Settlement, ANR and five of its customers taking deliveries in the Marshfield Affected Area (Marshfield Shippers) entered into the 2004 Marshfield Settlement.¹⁰ The 2004 Marshfield Settlement was a step in addressing ANR’s remaining need, after the in-service date of the NorthLeg Project, for up to 101,135 Dth/d of winter receipts flowing from Viking at the Marshfield Interconnection to support ANR’s winter firm delivery requirements in the Marshfield Affected Area.

9. Pursuant to the 2004 Marshfield Settlement, the Marshfield Shippers agreed to extend the terms of certain of their existing contracts (Marshfield Contracts) that designated the Marshfield Interconnection as their primary receipt point. ANR’s currently-effective tariff implements certain provisions of the 2004 Marshfield Settlement’s Term Sheet. Section 6.8.4(a) of ANR’s General Terms and Conditions (GT&C), as clarified by Paragraph F of the Term Sheet, permits ANR to issue an Operational Flow Order during the winter period (November 1 through March 31) requiring the Marshfield Shippers to tender up to their contract quantities at their primary receipt point, the Marshfield Interconnection.¹¹

⁸ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

⁹ *NorthLeg*, 107 FERC ¶ 61,250 at P 24.

¹⁰ The 2004 Marshfield Settlement was approved by the Commission on December 13, 2004. *ANR Pipeline Company*, Docket No. RP05-69-000 (Dec. 13, 2004) (unpublished letter order).

¹¹ In addition, section 6.33.2 of ANR’s GT&C allows amendments of the Marshfield Contracts’ primary receipt points away from the Marshfield Interconnection during the contract terms in three circumstances: 1) termination of certain other contracts with primary delivery points in the Marshfield area; 2) a change in ANR’s Wisconsin system operations in a way that would make all or a portion of the Marshfield Contracts unnecessary; or 3) replacement of Marshfield receipts by a Marshfield Shipper that participates in a system expansion that provides incremental capacity from an alternative receipt point.

10. In 2010, three of the five Marshfield Shippers – Wisconsin Electric Power Company, Wisconsin Gas LLC, and Wisconsin Public Service Corporation (MRP Shippers) – filed a complaint with the Commission alleging that ANR had violated the 2004 Marshfield Settlement and GT&C section 6.33 of its tariff by failing to notify them of operational and contractual events on the Wisconsin system that could have reduced or eliminated their obligations to maintain Marshfield receipt point capacity. To resolve the issues raised in the complaint, the MRP Shippers and ANR entered into a settlement agreement dated March 28, 2011 (2011 MRP Settlement).¹²

11. Under the 2011 MRP Settlement, ANR agreed to file this certificate application to construct the MRP to add compression in southern Wisconsin that would end ANR’s need for 101,135 Dth/d of winter receipts at the Marshfield Interconnection. ANR also agreed to remove GT&C section 6.33 from its tariff on the in-service date of the MRP.

12. As detailed further below, the MRP Shippers have agreed as part of the 2011 MRP Settlement to pay monthly surcharges to ANR, up to a total of \$144,000 per month during a 10-year recovery period. The MRP Shippers also agreed to amend and extend their contracts for firm deliveries in the Marshfield Affected Area and two of the MRP Shippers¹³ have agreed to extend certain contracts for transportation and storage service in other areas of the Northern Segment. ANR describes the 2011 MRP Settlement as “permanently resolv[ing] the operational issues surrounding [its] need for flowing gas at Marshfield”¹⁴

II. Proposal

13. The proposed MRP will consist of a 6,300 hp gas-driven centrifugal compressor unit and appurtenant facilities in Portage County, Wisconsin, north of Stevens Point, Wisconsin. ANR states that the project will eliminate the need for the Marshfield Shippers to maintain 101,135 Dth/d of primary winter receipt point capacity at the Marshfield Interconnection. In addition, ANR asserts its proposal will provide all existing shippers on ANR’s Wisconsin system the benefits of additional supply diversity, greater system reliability, and enhanced flexibility.

14. ANR estimates that the cost to construct the MRP is \$25.1 million, including an Allowance for Funds Used During Construction (AFUDC). As noted, ANR requests a

¹² See *Wisconsin Electric Power Co.*, 136 FERC ¶ 61,080 (2011).

¹³ Wisconsin Electric Power Company and Wisconsin Gas LLC.

¹⁴ ANR’s Application at 5.

predetermination that it may roll the project's costs into its system rates in a future NGA section 4 rate case based upon the increased system reliability and flexibility provided by the MRP. ANR also notes that the MRP Shippers have agreed to pay an incremental monthly surcharge during a set cost-recovery period beginning on the project's in-service date "to compensate ANR for a portion of the cost associated with the new construction."¹⁵ ANR states, without elaboration, that it "will take into account the surcharge revenues . . . in the derivation of system wide rates in a future rate proceeding."¹⁶

III. Procedural Matters

15. Notice of ANR's application in Docket No. CP11-539-000 was published in the *Federal Register* on September 12, 2011 (76 Fed. Reg. 56,191). Eleven parties filed timely, unopposed motions to intervene.¹⁷ These parties are identified in Appendix A to this order. The Wisconsin Public Service Corporation's intervention included comments in support of ANR's application.

16. In addition to its intervention, Northern States Power Company-Minnesota (Northern Power), a public utility and firm shipper on ANR, filed a protest. ANR filed an answer to Northern Power's protest. Rule 213(a)(2) of the Commission's regulations prohibits an answer to a protest unless otherwise ordered by the decisional authority.¹⁸ We will allow the filing because doing so will not cause undue delay and it may assist us in our decision-making process. The protest and answer are addressed below.

IV. Discussion

17. Because the proposed facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, their construction and operation are subject to the requirements of section 7(c) of the NGA.

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 8.

¹⁷ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214 (2011).

¹⁸ 18 C.F.R. § 385.213(a)(2) (2011).

A. The Certificate Policy Statement

18. The Certificate Policy Statement provides guidance for evaluating proposals for certificating new construction.¹⁹ The Certificate 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 Certificate Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, the 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.

19. 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 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, existing pipelines in the market and their captive customers, or landowners and communities affected by the location of the new compressor station. 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 proceed to complete the environmental analysis where other interests are considered.

20. As noted above, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The Certificate Policy Statement provides that increasing the rates of existing customers to pay for improvements that benefit existing customers is not a subsidy.²⁰ As ANR's system is currently configured, ANR must rely on certain of its shippers to have designated volumes of gas delivered to ANR at the Marshfield Interconnection during the winter season to ensure that ANR will be able to meet its service obligations to its shippers on its Northern Segment. This is an inherently less than desirable situation that

¹⁹ Certificate Policy Statement, *supra* note 8.

²⁰ *NorthLeg*, 107 FERC ¶ 61,250 at P 24 (*citing* Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,746 n.12).

has existed, in decreasing degrees, for almost 20 years, since the restructuring of the interstate natural gas system following the implementation of the unbundling requirements of Order No. 636. The capacity provided by the compression proposed in this proceeding will allow this situation to be remedied, once and for all. We find that eliminating the need for ANR to rely to such a degree on contractual arrangements, which by their nature are subject to termination, to meet its service obligations will benefit all of its shippers. The purpose of this project is not to create additional capacity which can be used to provide increased levels of service on an incremental basis. Rather, the capacity created by the MRP will primarily compensate for capacity lost when the Marshfield Shippers move primary receipt points from ANR's interconnection with Viking. Thus, we find that the MRP may proceed as proposed without subsidy from existing shippers and further, as discussed below, that it is appropriate for the costs associated with the MRP project to be rolled into ANR's system rates in its next general section 4 rate case.

21. With regard to the other requirements of the Certificate Policy Statement, the purpose of the MRP is to enable ANR to provide more flexible and reliable service for existing shippers on its system; therefore, the project will have no impact on the existing services of competing pipelines. Accordingly, neither those pipelines nor their captive customers will be adversely affected. Further, ANR's existing customers' quality of service will not be degraded by the project.

22. ANR has designed its project to have a minimal impact on landowners or communities near the proposed compressor station. There have been no landowner objections to the proposal. Moreover, ANR holds all of the property rights necessary for the development of the MRP.

23. We find that the MRP will provide ANR's system with enhanced flexibility and reliability in meeting its existing shippers' demands. Balancing ANR's proposed project's minimal adverse impacts on the landowners, existing customers, and competitors against the project's anticipated benefits, we find the proposed MRP to be consistent with our Certificate Policy Statement and required by the public convenience and necessity. To the extent there are any residual adverse effects stemming from this project, those effects will be outweighed by the benefits of the project.

B. Rates

1. Request for Rolled-in Rates

24. ANR requests a predetermination that it may roll the costs associated with the MRP into its system rates in a future NGA section 4 rate case. ANR maintains that such a predetermination can be justified solely on the basis that it is not a subsidy to raise the rates of existing shippers to pay for capacity that increases system reliability and

flexibility. ANR also notes that a rolled-in rate predetermination would be consistent with the Commission's action in the NorthLeg Order, since that project served the same purpose as the proposed MRP – enabling ANR to make deliveries on its Northern Segment without having to rely on Viking receipts.²¹

25. In addition, ANR alleges that the MRP will provide rate benefits to existing shippers throughout the Northern Segment due to the incremental monthly surcharges to be paid by the MRP Shippers under the 2011 MRP Settlement, the contract extensions for Marshfield Affected Area service agreed to by the MRP Shippers, and the additional contract extensions agreed to by two of the MRP Shippers for service outside the Marshfield Affected Area, but within the Northern Segment.²²

26. As stated above, under the 2011 MRP Settlement, each of the MRP Shippers will pay ANR a fixed percentage share of an aggregate incremental monthly surcharge.²³ ANR states, without further elaboration, that “it will take into account the surcharge revenues . . . in the derivation of system wide rates in a future rate proceeding.”²⁴ The surcharge calculation will be based, in part, on the lesser of the MRP's final construction cost or \$25 million.²⁵ Paragraph 23 of the 2011 MRP Settlement sets forth the following

²¹ *NorthLeg*, 107 FERC ¶ 61,250 at P 6.

²² In Docket Nos. RP11-2652-001 and RP12-451-000, Commission staff approved the Marshfield Contracts and the non-Marshfield Contracts along with revised tariff records listing such contracts as non-conforming.

²³ The formula, as contained in Paragraph 23 of the 2011 MRP Settlement, is [Actual MRP Facilities construction costs (capped at \$25 million) x 13.89% (Settled Cost Factor) x 50% (Settled Cost Percentage)] divided by 12 (months). Paragraph 24 of the 2011 MRP Settlement provides that the MRP Shippers may individually designate which Marshfield Contracts will be subject to the incremental monthly surcharge. Paragraph 26 of that settlement identifies five existing negotiated rate Marshfield Contracts between ANR and the MRP Shippers that will be amended and extended to October 31, 2023. Paragraph 26 also states that “the rates charged under those agreements will be negotiated rates, fixed at maximum tariff rates, which rates are in effect as of the effective date of [the 2011 MRP Settlement].”

²⁴ ANR's Application at 8.

²⁵ Exhibit K of ANR's application estimates the construction cost to be \$25,106,000, including \$1,333,000 for AFUDC and \$2,148,000 for Contingencies.

illustrative surcharge shares for each MRP Shipper, assuming an aggregate monthly surcharge of \$144,687.50, which is based on a \$25 million MRP construction cost:²⁶

Wisconsin Public Service Corporation Share	47.00 percent or \$68,003.13 per month
Wisconsin Gas LLC Share	32.15 percent or \$46,517.03 per month
Wisconsin Electric Power Company Share	17.31 percent or \$25,045.41 per month

27. According to the cost/revenue comparison in Exhibit N of ANR's application, projected annual surcharge payments averaged over a 10-year period would equal \$1,675,000 compared with a projected 10-year average annual MRP cost of service (excluding surcharge revenues) of \$4,346,000 per year.²⁷ ANR did not project MRP revenues in Exhibit N because the MRP will not add billing determinants to the Northern Segment.

28. To further support its request for a rolled-in rate predetermination, ANR maintains that significant revenues from the non-Marshfield Affected Area transportation and storage contract extensions for terms from eight to ten years might not be generated but for ANR's agreement to construct the MRP facilities. ANR contends that, although its request for a rolled-in predetermination is solely justified by increases in system reliability and flexibility that will be produced by the MRP, such contract extensions will provide additional support for a roll-in predetermination by adding revenues in the Northern Segment that will not have to be recovered from other shippers.²⁸

29. ANR asserts that the beneficial effect of all transportation contract extensions included under the MRP Settlement is illustrated by the fact that revenues from the extensions (without MRP surcharge revenues) will equal, in just over 18 months, the approximate aggregate MRP cost of service projected over ten years in Exhibit N of the

²⁶ The aggregate monthly surcharge payment will be determined once the final MRP construction cost is known. The cost recovery period will begin no earlier than November 1, 2013, and will continue through October 31, 2023.

²⁷ The overall cost of service reflects the rate of return and depreciation rates in ANR's settlement in Docket No. RP94-43, which was filed on October 17, 1997, and approved by the Commission on February 13, 1998. *ANR*, 82 FERC ¶ 61,145 (1998).

²⁸ ANR alleges that the storage revenues totaling \$13,000,000 will reduce the system's revenue requirements. ANR's Application at 9 n.11.

application.²⁹ ANR states that annual revenues from all transportation contracts extended under the MRP Settlement for service in the Northern Segment will equal 7.04 percent of the annual Northern Zone revenues reflected in ANR's 2010 FERC Form 2 and will remain at that level for not less than eight years.³⁰ According to ANR, these comparisons illustrate that the future rate impact of the 2011 MRP Settlement will benefit ANR's system by an order of magnitude far greater than the revenue requirements of the MRP over a comparable period.

2. Protest

30. Northern Power argues that ANR's request for a rolled-in rate predetermination should be denied because the 2004 Marshfield Settlement contains an option (Build-Out Option) requiring incremental pricing of any facility, such as the MRP, that would be constructed to replace that settlement. The Build-Out Option states:

[d]uring the term of a Marshfield Contract, including any extensions thereof, if a Marshfield Shipper requests build-out cost data at least ninety (90) days prior to the date the Marshfield Shippers are required to give notice of termination . . . ANR will provide to the Marshfield Shippers its current estimate of the capital investment required to reduce that party's Marshfield Contracts to zero at least thirty (30) days prior to the date the Marshfield Shippers are required to give notice of termination

Northern Power argues that the only reasonable interpretation of such language is that a Marshfield Shipper could buy out its Marshfield obligation by agreeing to pay an incremental rate for the full cost of facilities needed to eliminate its settlement obligation.

31. ANR disagrees with Northern Power's interpretation of the Build-Out Option. ANR states that the option only requires ANR to estimate the capital investment needed to reduce a party's Marshfield obligation, and does not state who would pay for the cost of such investment or how it would be paid for.

32. We agree with ANR that the Build-Out Option does not on its face require that any future construction that might reduce or eliminate the need for Marshfield receipts must be priced on an incremental basis. Contrary to Northern Power's interpretation, we believe it is just as reasonable to expect that shippers as sophisticated as the Marshfield Shippers would have expressly stated in the 2004 Marshfield Settlement any agreement

²⁹ *Id.* at 9.

³⁰ *Id.*

pertaining to an issue as significant as future rate treatment. Further, it is quite conceivable that parties to the 2004 Marshfield Settlement would have at least contemplated that future replacement facilities would receive the same rolled-in rate treatment proposed and approved for the NorthLeg Project. Therefore, we find that the Build-Out Option does not preclude a rolled-in predetermination.

33. Northern Power also argues that ANR's request for a rolled-in predetermination should be denied because the 2004 Marshfield Settlement provides a permanent contractual solution to ANR's need for reliability and flexibility on its Wisconsin system, rendering construction of the MRP unnecessary. Northern Power avers that, in neither the certificate proceeding nor the complaint proceeding, did ANR suggest that its system design raised any reliability concerns. To the contrary, Northern Power argues that the system is highly reliable, and that the proposed compressor would not result in reliability gains because once the Marshfield contractual obligations are extinguished, they cannot serve as a backup if the proposed compressor fails.

34. To support its argument that the 2004 Marshfield Settlement was intended to permanently solve ANR's operational problems in western Wisconsin, Northern Power cites to a statement in ANR's November 12, 2004 Transmittal Letter requesting Commission approval of the settlement (2004 Transmittal Letter). This letter describes the 2004 Marshfield Settlement as "the mechanism necessary to ensure flowing volumes at ANR's Marshfield Wisconsin Receipt Point, thereby improving operational integrity of ANR's system such that reliance on Viking volumes [is] no longer necessary."³¹ According to Northern Power, this statement demonstrates that the settling parties viewed the 2004 Marshfield Settlement, along with construction of the NorthLeg Project, as permanently eliminating ANR's need to construct additional facilities such as the MRP.³²

35. ANR responds that the 2004 Marshfield Settlement was not designed to be a permanent solution, as evidenced by the Build-Out Option which anticipated that construction of future facilities might be needed to end the Marshfield obligation. ANR asserts that construction of the MRP facilities will finally resolve the issues surrounding the Marshfield receipt point obligation.

³¹ 2004 Marshfield Settlement Transmittal Letter at 8.

³² Northern Power also argues that the proposed compressor station will not replace existing capacity but should be viewed as a system expansion without the support of contracts for additional firm service. However, because the MRP will increase system reliability and flexibility for existing shippers, it is not necessary for the project to increase system billing determinants to be eligible for a rolled-in predetermination.

36. We agree with ANR that the 2004 Marshfield Settlement did not permanently satisfy ANR's need for reliability. As we noted above, it is an inherently less than desirable situation for a pipeline to have to rely in perpetuity on contractual arrangements to meet its service obligations to its customers (especially, as is the case here, including customers who are not parties to those contracts). Further, language in paragraph C of the 2004 Marshfield Settlement describing the terms of the Marshfield Shippers' contracts under the settlement suggests the settlement was not to be a permanent situation:

Term: Contract term extending through the later of (i) 3/31/10 or (ii) the termination date of the existing Marshfield contract(s) with 3 years prior notice to terminate. Absent termination notice as to all or part of the contract quantity, Marshfield Contracts will continue to rollover for additional 1 year periods for that part of the contract quantity not terminated until such termination notice is received.

37. Notwithstanding ANR's description of the settlement in its 2004 Transmittal Letter noted by Northern Power, the settlement language itself establishes limited initial contract terms, followed by annual rollovers until ANR receives notices of termination. Because the reliability provided by the settlement contracts is subject to termination, we find that the MRP's physical capacity will provide a permanent and, therefore, increased level of reliability for ANR and its existing shippers.³³

38. Northern Power further maintains that the MRP has not been proposed for operational reasons as ANR asserts, but to resolve a complaint. According to Northern Power, the MRP is intended to provide localized benefits only for the settling complainants, rather than system-wide benefits that would support a rolled-in predetermination. In support, Northern Power cites ANR's statement in the 2004 Marshfield Settlement that the settlement was negotiated "with [the Marshfield Shippers] to ensure primary deliveries in the area of ANR's system most directly affected by ANR's reliance on flows at Marshfield are and can be maintained."³⁴ In a related

³³ Northern Power also argues that, because *NorthLeg* involved an operational issue that no longer exists, it cannot be relied upon to support a rolled-in predetermination for the MRP costs. See 107 FERC ¶ 61,250 (2004). However, as we have discussed, the NorthLeg project only alleviated part of ANR's operational constraints, while the MRP permanently resolves those constraints. Therefore, ANR may request a predetermination for the MRP costs.

³⁴ Northern Power's Protest at 10 (*citing* 2004 Marshfield Settlement Transmittal Letter at 4).

argument, Northern Power asserts that since all of ANR's customers, except for the Marshfield Shippers, currently have flexible receipt point rights, any flexibility gains produced by the MRP could be experienced only by the Marshfield Shippers.

39. ANR responds that the Marshfield Shippers are only a subset of the shippers serviced by ANR in the Marshfield Affected Area. ANR asserts that the MRP will benefit shippers beyond the Marshfield Affected Area by "remov[ing] a constraint that currently precludes ANR from providing additional service from the south through constraint points north of its Joliet Hub near Chicago, Illinois."³⁵ According to ANR, the MRP "facilities will increase the reliability of the system and enhance the ability of all shippers to move to different primary receipt points or alternative secondary points on the capacity coming from the south of ANR's system to ANR's Wisconsin service area."³⁶ Finally, ANR maintains that the MRP "will provide greater access to different supply basins and potentially more competitively priced gas."³⁷

40. We disagree with Northern Power that the MRP will benefit only the Marshfield Shippers. The Marshfield Shippers' agreement to maintain winter season flow at the Marshfield Interconnection frees up ANR's capacity to serve existing Wisconsin shippers whose primary receipt points are not located at the interconnection. The 2004 Transmittal Letter states:

but for the existence of the historical contracts . . . having receipts into ANR at Marshfield . . . certain capacity having receipt points other than Marshfield (*e.g.*, receipt points bringing gas into the state from the south, rather than from the north, like Marshfield) but delivering to points within Wisconsin, would not have been available. Therefore, such corresponding existing contractual obligations sourced from receipt points other than Marshfield have been from their conception and continue to be dependent on these historical Marshfield contracts.³⁸

41. Appendix B of the 2004 Marshfield Settlement identifies the contract numbers of "Appendix B Eligible Contracts" whose shippers, as described in the passage quoted

³⁵ ANR's Answer at 12-13.

³⁶ *Id.* at 13.

³⁷ ANR notes that these are the same benefits that justified the Commission's rolled-in predetermination in *NorthLeg*.

³⁸ 2004 Marshfield Settlement Transmittal Letter at 7.

above, have existing contractual obligations sourced from receipt points other than Marshfield that are dependent on Marshfield contracts. The role of the 2004 Settlement in freeing up ANR capacity for existing shippers' "Appendix B Eligible Contracts" is evident from Paragraph G.1.b. of the 2004 Term Sheet, which provides that if any of the "Appendix B Eligible Contracts" terminate, then ANR will permit a corresponding reduction or elimination of the Marshfield Shippers' receipt point flow obligation.³⁹ Paragraph G.1.b. of the 2004 Term Sheet demonstrates that ANR could perform the Marshfield Shippers' delivery requirements that are now subject to the 2004 Marshfield Settlement using the same contractual paths as it uses to serve existing shippers under "Appendix B Eligible Contracts."

42. ANR continues to lack sufficient physical capacity to serve the current contract requirements of both the Marshfield Shippers and existing shippers holding "Appendix B Eligible Contracts." Therefore, shippers holding "Appendix B Eligible Contracts" benefit from the increased physical capacity made available to serve their delivery requirements by the removal of the Marshfield Shippers' contract demand requirements to the Marshfield Interconnection under the 2004 Marshfield Settlement. It follows that the existing shippers holding "Appendix B Eligible Contracts" will also benefit from the increase in system reliability resulting from the MRP facilities, as these facilities will enable ANR to accommodate, on a permanent basis, the delivery needs of both these shippers and the Marshfield Shippers.⁴⁰

43. Northern Power does not dispute that the MRP will allow the Marshfield Shippers to avoid purchasing more expensive Canadian gas, thereby arguably increasing their supply flexibility. However, Northern Power maintains that the Marshfield Shippers chose to forgo this ability in the 2004 Marshfield Settlement in return for significant discounts and for preferential access to certain capacity that might become available upon certain contract terminations. Hence, Northern Power alleges that it would be unfair to

³⁹ Paragraph G.1.b. of the 2004 Term Sheet provides that "[i]f any Appendix B contract terminates . . . then . . . [ANR] will allow the [Marshfield Shippers] to transfer Primary Receipt Point MDQ[s] from Marshfield to any existing Receipt Point that is within the path of the Appendix B contract . . ." This provision is also implemented in GT&C section 6.33.2.A.(1) and (2) of ANR's tariff.

⁴⁰ The Commission notes that the largest amount of capacity under contract to an existing shipper on the list of "Appendix B Eligible Contracts" appears to be Northern. Northern holds 20,000 Dth/d of the 72,000 Dth/d of transportation capacity under contract listed in Appendix B - 15,171 Dth/d under Contract No. 106122 and 4,829 Dth/d under Contract No. 106209. It thus seems disingenuous for Northern to argue that only the MRP Shippers will experience the benefits of the MRP.

impose the costs of a facility intended to replace the 2004 Marshfield Settlement on existing shippers in the Northern Segment who, unlike the Marshfield Shippers, did not benefit from the 2004 Marshfield Settlement.

44. While we do not necessarily agree with Northern Power's characterization of the benefits derived by the Marshfield Shippers from the 2004 Marshfield Settlement (for example, there was a complete lack of interest by ANR's shippers in acquiring Marshfield capacity when ANR advertised its availability in the Open Season that preceded the 2004 Marshfield Settlement⁴¹), as discussed above, we find the physical capacity to be added by the MRP will benefit all ANR customers. Thus, it is reasonable for the costs to be rolled into ANR's system rates.

45. Northern Power also objects to ANR's use of transportation contract extensions to support its request for a rolled-in predetermination. Northern Power argues that contract extensions are not among the permitted criteria enumerated by the Certificate Policy Statement to justify rolled-in rates. Northern Power explains that the cost/revenue comparisons involved in such a justification could be too easily manipulated by incorporating revenues from extended contracts that have only a peripheral connection to the project. Such manipulation, Northern Power avers, would circumvent the no-subsidy test of the Certificate Policy Statement. In addition, Northern Power argues that contract extensions are speculative, and that ANR has not provided evidence that any of its shippers have threatened to leave the system when their current contracts expire.

46. ANR states that even though the system benefits produced by the MRP alone justify rolled-in rate treatment, the additional billing determinants and revenues produced by the contract extensions for service within and beyond the Marshfield Affected Area demonstrate the system-wide economic benefits underlying the MRP. ANR alleges that the revenues from the contract extensions would not have occurred but for the proposal to construct the MRP and are no different than revenues derived from new contracts executed in connection with a proposed project. Finally, ANR states that the shippers it made contract extensions with hold capacity on other interstate pipelines that compete with ANR, and that without proposing the MRP and making contract extensions, these shippers might have relinquished their capacity on ANR in favor of alternative pipelines.

47. Although the revenues and billing determinants associated with the contract extensions here will benefit Northern Segment shippers if ANR files a general rate case while the extensions are in effect, the Commission will not attempt to deconstruct a previously approved settlement to determine what induced the parties to agree to

⁴¹ See 2004 Marshfield Settlement Transmittal Letter at 4.

particular contract extensions, or whether such extensions would have occurred without the MRP Settlement. The representations of both Northern Power and ANR are equally speculative in this regard. However, we do not have to make a determination on this issue, since we will issue a predetermination favoring rolled-in rate treatment of the MRP's costs solely on the basis of the increased system reliability and flexibility that the MRP will produce.

3. Commission Determinations

48. We will grant ANR's request for a predetermination that it may roll the costs associated with the MRP into its system rates in a future NGA section 4 rate case, absent a significant change in circumstances. As discussed in the Certificate Policy Statement, increasing the rates of existing customers to pay for improvements to benefit existing customers does not constitute a subsidy.⁴² Further, since the project will not add billing determinants to the system, we find that a surcharge applicable to the MRP shippers is an appropriate method of recovering a portion of the project's costs, as approved in the order terminating the complaint proceeding in Docket No. RP10-517-000.⁴³

49. In addition, ANR states that it will take into account the surcharge revenues in the derivation of system wide rates in a future rate proceeding. ANR also describes the surcharge revenues as a cost contribution from the MRP shippers.⁴⁴ Therefore, we direct ANR to track all revenues attributable to the surcharge payments so that such revenues can be appropriately credited to the costs ANR uses to derive system rates in its next general rate case.

50. Finally, we note that ANR has not proposed how it will recover the fuel costs associated with the MRP compression. Because the MRP capacity will be fully integrated with ANR's existing capacity, we provide a predetermination that ANR may roll fuel costs associated with the project in its fuel tracker filings under GT&C section 6.34 of its tariff.⁴⁵

⁴² 88 FERC ¶ 61,227 at 61,746 n.12.

⁴³ *Wisconsin Electric Power Co.*, 136 FERC ¶ 61,080 (2011).

⁴⁴ ANR's Application at 8.

⁴⁵ *See, e.g., Trunkline Gas Co., LLC*, 135 FERC ¶ 61,019, at P 27 (2011) (“[i]t is Commission policy to make [a rate predetermination], where appropriate, recognizing that a predetermination of how costs will be treated enables existing and potential shippers to make appropriate decisions to protect their interests either in the certificate

(continued...)

C. Environmental Assessment

51. On September 16, 2011, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Marshfield Reduction Project and Request for Comments on Environmental Issues* (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. No comments in response to the NOI were received.

52. To satisfy the requirements of the National Environmental Policy Act, our staff prepared an environmental assessment (EA) for ANR's proposal. The analysis in the EA addresses geology, soils, water resources, vegetation, wildlife, threatened and endangered species, land use, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. The staff placed the EA into the public record on February 17, 2012. To date, no comments on the EA have been received.

53. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with ANR's application and supplements, and in compliance with the environmental conditions in the Appendix to this Order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

54. 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.⁴⁶

55. ANR shall notify the Commission's environmental staff by telephone, e-mail, 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.

proceeding or in their contracts with the pipeline."); *Gulf South Pipeline Co., LP*, 130 FERC ¶ 61,015, at P 24 (2010) (finding that a system fuel rate is appropriate for an integrated system).

⁴⁶ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

56. At a hearing held on April 19, 2012, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application(s), as supplemented, and exhibits thereto, submitted in support of the authorizations 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 authorizing ANR to construct and operate pipeline facilities, as described more fully in this order and in the application.

(B) The certificate issued in Ordering Paragraph (A) is conditioned on the following:

(1) ANR's compliance with all applicable Commission regulations under the Natural Gas Act, particularly the general terms and conditions set forth in paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations;

(2) ANR's completing the authorized construction of the proposed facilities and making them available for service within eighteen months of the issuance of this order, in accordance with section 157.20(b) of the Commission's regulations;

(3) ANR's compliance with the rate directives in this order; and

(4) ANR's compliance with the environmental conditions set forth in Appendix B to this order.

(C) ANR's request for a predetermination of rolled-in rate treatment of the MRP costs in ANR's next general rate case is approved, absent a significant change in circumstances.

(D) ANR may roll in the fuel costs associated with the MRP in its fuel tracker filings under GT&C section 6.34 of its tariff.

(E) ANR shall notify the Commission's environmental staff by telephone, e-mail, 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) ANR's motion for leave to file an answer is granted and its answer is accepted as discussed in the body of the order.

(G) Northern Power's protest is denied, for the reasons discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Interventions

Atmos Energy Corporation

Atmos Energy Marketing LLC

Constellation NewEnergy-Gas Division, LLC

Consumers Energy Company

Integrus Gas Group

Madison Gas and Electric Company

Northern Indiana Public Service Company

Northern States Power Company-Minnesota

ProLiance Energy, LLC

SEMCO Energy Gas Company

Wisconsin Electric Power Company together with Wisconsin Gas LLC

Wisconsin Public Service Corporation

Appendix B

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 (including responses to staff data requests) and as identified in the EA, unless modified by this Order. ANR must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.

2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during activities associated with construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.

3. **Prior to any construction**, ANR shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs) and contractor personnel will be informed of the EI'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 locations shall be as shown in the EA. **As soon as they are available, and before the start of construction**, ANR shall file

with the Secretary any revised detailed survey maps/sheets at a scale not smaller than 1:6,000 for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these maps/sheets.

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 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 extra workspace allowed by ANR's Erosion and Sediment Plan and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of this certificate and before construction** begins, ANR shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. ANR must file revisions to the plan as schedules change. The plan shall identify:
 - a. how ANR will implement the construction procedures and mitigation measures described in its application and supplements, identified in the EA, and required by this Order;

- b. how ANR will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the locations and dates of the environmental compliance training and instructions ANR will give to all personnel involved with construction and restoration (initial and refresher training given as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of ANR's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) ANR will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, ANR shall file updated status reports with the Secretary on a biweekly basis until all construction and restoration activities 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. an update on ANR's efforts to obtain the necessary federal authorizations;
 - b. the 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;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);

- d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. 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
 - g. copies of any correspondence received by ANR from other federal, state, or local permitting agencies concerning instances of noncompliance, and ANR's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, ANR shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
 9. ANR must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the all areas affected by the project are proceeding satisfactorily.
 10. **Within 30 days of placing the authorized 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 affected by the project where compliance measures were not properly implemented, if
 - c. not previously identified in filed status reports, and the reason for noncompliance.
 11. ANR shall file a noise survey with the Secretary **no later than 60 days** after placing the Stevens Point Compressor Station in service. If the noise attributable to the operation of all of the equipment at the Stevens Point Compressor Station at full load exceeds a day-night average sound level of 55 decibels on the A-weighted scale at any nearby noise sensitive areas, ANR shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year** of the in-service date. ANR shall confirm compliance with the above requirement by filing

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