

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

ANR Pipeline Company

Docket Nos. RP04-201-002  
RP04-201-003

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued January 26, 2005)

1. On July 13, 2004,<sup>1</sup> the Commission found that the tariff provisions of ANR Pipeline Company (ANR) concerning fuel use and lost and unaccounted for (L&U) gas were unjust and unreasonable because for seven of the last eight years ANR consistently over collected its fuel use volumes by approximately 32.1 Bcf for this period and was not required to refund such over collections to its customers. The Commission directed ANR to file *pro forma* tariff sheets to implement a fuel tracker with a true-up mechanism. On August 12, 2004, ANR and the Wisconsin Distributor Group (WDG)<sup>2</sup> requested rehearing of the Commission's July 13, 2004 Order. On October 8, 2004,<sup>3</sup> the Commission invited comments on ANR's and WDG's requests for rehearing. In compliance with the Commission's directives, ANR filed, on October 12, 2004, *pro forma* tariff sheets to implement a fuel tracker with a true-up mechanism.<sup>4</sup> Various parties filed comments to the October 8, 2004 Order, providing their position on the claims made by ANR and WDG on whether the Commission should require ANR to implement a fuel tracker. In addition, parties filed comments on ANR's *pro forma* tariff sheets establishing the true-up provision.

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<sup>1</sup> *ANR Pipeline Company*, 108 FERC ¶ 61,050 (2004) (July 13, 2004 Order).

<sup>2</sup> The WDG members in this proceeding are: Alliant Energy - Wisconsin Power & Light Company, City Gas Company, Madison Gas & Electric Company, Wisconsin Gas LLC, Wisconsin Electric Power Company and Wisconsin Public Service Corporation.

<sup>3</sup> *ANR Pipeline Company*, 109 FERC ¶ 61,038 (2004) (October 8, 2004 Order).

<sup>4</sup> The Commission granted ANR an extension of time from August 12, 2004 to October 12, 2004 to comply with the directives of the July 13, 2004 Order.

2. For the reasons discussed below, the Commission will deny ANR's and WDG's requests for rehearing and require ANR to implement a fuel tracker with a true-up provision. We will accept the *pro forma* tariff sheets ANR filed to implement the fuel tracker with a true-up provision subject to ANR filing revised tariff sheets for implementing the true-up provision. The facts of this case and industry practice support requiring ANR to establish a fuel tracker with a true-up mechanism. This decision benefits the public because it requires the pipeline to track and true-up its actual fuel use costs thereby relieving both the pipeline and the shippers of over or under recoveries and ensuring that all parties are kept whole.

### **I. Background**

3. Section 1.68 of ANR's General Terms & Conditions (GT&C) requires ANR to re-determine its "Transporter's Use (%)" as of April 1 of each year. ANR's Transporter's Use (%) is the percentage of its shippers' gas that ANR retains. The Transporter Use (%) includes two separate percentages: the fuel use percentage and L&U gas percentage. The fuel use percentage compensates ANR for the fuel used in its operations and the L&U percentage compensates ANR for L&U gas. Since 1997, ANR has calculated its fuel use percentages by dividing the average of the three previous calendar years' actual compressor fuel use in each rate segment by the average of the net physical throughput in each rate segment for the same time period. ANR calculates the L&U percentages by dividing the average of the four previous calendar years' L&U gas quantities by the average annual sales, transportation and storage quantities for the same four years. ANR's tariff contains no provision for ANR to true-up any over or under collections of fuel use or L&U gas during previous periods.

4. The fuel use calculation has been an issue on ANR's system for a number of years.<sup>5</sup> The Commission approved ANR's current fuel recovery mechanism in 1997.<sup>6</sup> At that time, the Commission rejected requests that it require ANR to include a mechanism for trueing up over and under collection of fuel use and L&U gas. The Commission found that ANR had not been overrecovering its fuel use. However, the Commission stated that "should the information consistently indicate that ANR is

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<sup>5</sup> See *ANR Pipeline Company*, 98 FERC ¶ 61,053 (2002); 94 FERC ¶ 61,355 (2001); 82 FERC ¶ 61,273 (1998); 82 FERC ¶ 61,248 (1998); 81 FERC ¶ 61,414 (1997); 78 FERC ¶ 61,328 (1997); 78 FERC ¶ 61,290 (1997); 74 FERC ¶ 61,343 (1996); 72 FERC ¶ 61,126 (1995); 60 FERC ¶ 61,145 (1992); 59 FERC ¶ 61,347 (1992); 58 FERC ¶ 61,306 (1992); and 55 FERC ¶ 61,151 (1991).

<sup>6</sup> *ANR Pipeline Company*, 78 FERC ¶ 61,290 (1997).

overcollecting fuel, the Commission can reassess the need for changes to the fuel provisions, including a true-up mechanism, at that time.”<sup>7</sup> On January 30, 2002,<sup>8</sup> the Commission approved an Uncontested Settlement (Settlement) in which ANR and its shippers agreed to continue the current Transporter’s Use (%) throughput methodology. The Settlement provided that ANR would apply the Settlement’s methodology on ANR’s annual fuel matrix re-determination filings for the two succeeding filings and that in the filing due on March 1, 2004, the parties could review the results of adopting the Settlement methodology and any party could propose changes to the fuel mechanism or subsequent fuel use filings.<sup>9</sup>

5. On March 30, 2004, the Commission accepted and suspended, subject to refund and conditions, ANR’s March 1, 2004 annual fuel re-determination filing which established levels of fuel use percentages and L&U gas percentages for the twelve-month period commencing April 1, 2004. The Commission required ANR to address a number of questions concerning its Transporter’s Use (%) filing and provided shippers with the opportunity to comment on ANR’s compliance filing and respond to ANR’s explanations. The Commission also permitted parties to comment on whether ANR’s tariff should be changed to require a tracking of over and under recoveries in its annual fuel use re-determination filings.

6. In its July 13, 2004 Order on the compliance filing to the March 30, 2004 Order,<sup>10</sup> the Commission held that the lack of a true-up mechanism for ANR’s fuel tracker was unjust and unreasonable. Pursuant to section 5 of the Natural Gas Act (NGA), the Commission directed ANR to develop a true-up mechanism to account for the over and under recovery of fuel use and L&U gas. We directed ANR to evaluate and incorporate the elements of the fuel tracker proposed by Indicated Shippers<sup>11</sup> in its comments, where appropriate and consistent with other pipelines’ fuel tracking mechanisms, by filing *pro forma* tariff sheets establishing a true-up mechanism that the parties and the Commission could review to determine if it conforms to Commission policy.<sup>12</sup>

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<sup>7</sup> *Id.* at 62,267.

<sup>8</sup> *See ANR Pipeline Company*, 98 FERC ¶ 61,053 (2002).

<sup>9</sup> *Id.* at 61,138.

<sup>10</sup> *ANR Pipeline Co.*, 106 FERC ¶ 61,328 (2004) (March 30, 2004 Order).

<sup>11</sup> The Indicated Shippers consist of BP America Production Company, BP Energy Company, ChevronTexaco Natural Gas, a division of Chevron U.S.A. Inc., and Shell Offshore Inc.

<sup>12</sup> July 13, 2004 Order at P 18.

7. The Commission explained that, although it generally does not permit pipelines to change one element of their cost-of-service outside of a general section 4 rate case,<sup>13</sup> section 154.403 of its regulations permits a pipeline to adjust fuel use percentages in periodic limited rate filings pursuant to a methodology set forth in the pipeline's tariff. The July 13, 2004 Order stated that section 154.403(c)(11) of the Commission's regulations contemplates that the methodology may include a provision for truing up past over and under recoveries, but does not require such a true-up provision. However, we explained that the Commission's policy had been that, if a pipeline constantly over-collects its fuel, the Commission may require a true-up mechanism.<sup>14</sup> The July 13, 2004 Order found that ANR had over collected fuel use volumes for seven of the last eight years (1996-2003), with a cumulative over collection of approximately 32.1 Bcf for this period.<sup>15</sup> The Commission also found that ANR had collected approximately \$22.6 million in revenue by overcollecting fuel over the past two years. We were not persuaded by ANR's contention that its customers have benefited from the current mechanism resulting in a long-term reduction in fuel use gas and that the averaging approach smoothes out the variances in fuel use. We stated that whatever "smoothing" had occurred; there had been a clear bias toward overcollection. We thus found ANR's Transporter's Use (%) methodology to be unjust and unreasonable because it does not smooth out the significant long-term overcollection of gas on ANR's system, which ANR retains.<sup>16</sup> The Commission found that a fuel tracking mechanism will promote such accuracy and will keep the pipeline whole, thereby ensuring that no party gains or loses.<sup>17</sup>

8. ANR and WDG requested rehearing of the July 13, 2004 Order. In their requests for rehearing, ANR and WDG contended, among other things, that ANR's existing fuel recovery mechanism benefits ANR's customers by giving ANR an incentive to reduce its fuel use. They argued that, because ANR's fuel recovery mechanism bases each year's

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<sup>13</sup> In a general section 4 rate case, all elements of the pipeline's cost-of-service may be considered and increases in one element may be affected by decreases in another.

<sup>14</sup> *ANR Pipeline Co.*, 78 FERC ¶ 61,290 at 62,267 (1997) and *Northern Natural Gas Co.*, 80 FERC ¶ 61,332 at 62,105-06 (1997).

<sup>15</sup> For the most recent two years, 2002 and 2003, we found there had been a net over collection of 3,550,154 Dth and that, based on the current midpoint price of gas of \$6.375 per MMBtu on ANR's system; this net over-collection represented approximately \$22.6 million for this two year period.

<sup>16</sup> See July 13, 2004 Order at P 15.

<sup>17</sup> See July 13, 2004 Order at P 17.

fuel retention percentage on the average of fuel use on ANR's system during the preceding three years and lost and unaccounted for gas over the previous four years, ANR is able to retain a portion of any overrecoveries for fuel resulting from a downward trend in ANR's fuel use. On the other hand, they pointed out that ANR must absorb a portion of any underrecoveries if fuel use trends upward. WDG asserted that the benefit to customers from the incentive built into ANR's fuel recovery mechanism was shown by the fact that ANR's fuel consumption had declined from about 53-54 Bcf per year in 1996 and 1997 to about 33-36 Bcf per year in 2002 and 2003. ANR asserted that this reduction in fuel use had reduced customers' fuel cost by over \$26.9 million in 2002 and 2003. ANR and WDG each attached various charts and graphs to their rehearing request to support these assertions.

9. In light of these contentions by ANR and WDG and the new evidence in the charts and graphs attached to their rehearing requests, the Commission in its October 8, 2004 Order invited other parties to file comments on the claims made by ANR and WDG that the existing fuel mechanism results in system benefits which offset the over collection of gas. The Commission further required ANR to file *pro forma* tariff sheets so that parties would have the opportunity to review and comment on the proposed fuel tracker and true-up mechanism. The Commission stated that after the comments on the requests for rehearing and the compliance filing are evaluated it could contemporaneously act on both the requests for rehearing and ANR's *pro forma* tariff sheets.<sup>18</sup>

10. Consumers Energy Company (Consumers), The East Ohio Gas Company d/b/a Dominion East Ohio (Dominion), Michigan Consolidated Gas Company (MichCon), Proliance Energy, LLC (Proliance) and SEMCO Energy Gas Company (SEMCO) filed comments in support of the requests for rehearing. Atlanta Gas Light Company (AGLC), BP Energy Company (BP Energy), Duke Energy Trading and Marketing, L.L.C. and Duke Energy Marketing America, L.L.C. (Duke), Exxon Mobil Corporation (ExxonMobil) and Indicated Shippers filed comments opposing the requests for rehearing.

11. On October 12, 2004, ANR submitted *pro forma* tariff sheets<sup>19</sup> in compliance with the Commission's directives to implement a fuel tracker with a true-up mechanism. Public notice of the compliance filing was issued on October 18, 2004, allowing for protests to be filed as provided in section 154.210 of the Commission's regulations. On October 25, 2004, Indicated Shippers, ExxonMobil and WDG filed protests to the

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<sup>18</sup> See October 8, 2004 Order at P 4.

<sup>19</sup> Seventeenth Revised Sheet No. 2, Sixth Revised Sheet No. 92, Fifth Revised Sheet No. 193 and Fourth Revised Sheet No. 194.

compliance filing. Subsequently, on November 9, 2004, WDG filed limited reply comments and on November 22, 2004, Indicated Shippers filed a motion for leave to respond to WDG's limited reply comments raising the issue of whether the Commission should approve the continued use of transactional data.

## II. Discussion

12. In this proceeding, the Commission is acting under NGA section 5 to require ANR to modify its tariff provisions concerning fuel use and L&U gas. Therefore, the Commission bears the burden of showing that the existing tariff provision is unjust and unreasonable. Once this is accomplished, the Commission bears the burden of showing the justness and reasonableness of the remedial tariff changes it requires in order to minimize the problem of ANR overrecovering its fuel costs without returning any portion of these overrecoveries to its customers. The requests for rehearing focus on the issue of whether the Commission has satisfied its burden of showing that ANR's existing tariff provisions for tracking its fuel use and L&U gas is unjust and unreasonable. ANR's compliance filing and the protests thereto address the issue of developing a just and reasonable replacement tariff provision for ANR's existing tariff provisions concerning fuel use and L&U gas.

13. For the reasons discussed below, the Commission first denies the requests for rehearing and reaffirms its holding that ANR's existing tariff provisions are unjust and unreasonable, since they permit ANR to track changes in its fuel and L&U gas outside of a general section 4 rate case but do not require any true-up of under and overrecoveries. The Commission then finds that ANR's proposed changes to its tariff to include a true-up mechanism are just and reasonable.

### A. Whether ANR's current tariff is unjust and unreasonable

14. ANR's current mechanism for recovering its fuel use and L&U gas usage originated in a settlement which the Commission approved in 1992.<sup>20</sup> In 1997, the Commission rejected a request by WDG that it act under NGA section 5 to require ANR to include a true-up component in its fuel retention mechanism.<sup>21</sup> The Commission found that during the three-year period (1993-1995), ANR had a net underrecovery of fuel use and L&U gas, and therefore WDG had not shown why a true-up component was necessary or how it had been harmed by the absence of one. However, the Commission did require ANR to provide information in future filings so that a determination could be

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<sup>20</sup> *ANR Pipeline Co.*, 60 FERC ¶ 61,145 (1992).

<sup>21</sup> *ANR Pipeline Co.*, 78 FERC ¶ 61,290 (1997).

made on whether ANR had overcollected its fuel. The Commission then stated, “[s]hould the information consistently indicate that ANR is overcollecting fuel, the Commission can reassess the need for changes to the fuel provisions, including a true-up mechanism at that time.”<sup>22</sup>

15. In the instant case, the Commission has found that a pattern of overrecovery has developed, which no party disputes. For seven of eight years (1996-2003), ANR has substantially overrecovered its fuel use volumes by 43.3 Bcf,<sup>23</sup> with a net overrecovery in the last two years of that period of about 3.5 Bcf. In the July 13, 2004 Order, the Commission found that the net overrecovery for the last two years represented approximately \$22.5 million, based on the current midpoint price of gas of \$6.375 per MMBtu on ANR’s system. In its comments, AGLC asserts that for the entire eight years, the overrecovery is \$94.8 million.<sup>24</sup> Based on these facts, the Commission continues to find that the lack of a true-up mechanism in ANR’s fuel retention mechanism is unjust and unreasonable, since it allows ANR to retain substantial overrecoveries of gas, at a cost to its customers that now approaches \$100 million.

16. In their rehearing requests, ANR and WDG do not seriously dispute the Commission's findings that ANR has over the last eight years overrecovered its fuel use and L&U gas by these substantial amounts. However, they and the commenters supporting their position contend that the existing fuel retention mechanism has benefited customers in two ways. First, because the mechanism allows ANR to retain some overrecoveries when fuel usage trends downward but would require it to absorb underrecoveries when fuel use trends upward, they argue that the mechanism has given ANR an incentive to reduce its fuel usage. They argue that, as a result, over the last eight years, ANR has substantially reduced its fuel usage, with the result that its fuel retention

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<sup>22</sup> *Id.* at 62,267.

<sup>23</sup> The Commission in the July 13, 2004 Order found that based on Form No. 2 data, ANR had over collected 32.1 Bcf of gas for 7 of the past 8 years, 1996-2003. However, based on ANR’s fuel tracking filings for 1996-2003 in which ANR reported fuel use and L&U gas data, ANR actually overcollected 43.3 Bcf of gas for 7 of the last 8 years instead of the 32.1 Bcf reported in the July 13, 2004 Order. *See* the Appendix to this order.

<sup>24</sup> AGLC states that it calculated this amount by multiplying the overrecoveries for 1997-2001, as shown in ANR’s Form No. 2, by the NYMEX average price for each of those years and added this amount to the Commission's calculation of \$22.6 million as the overrecovery for the period from 2002-2003.

percentages on all its routes have been reduced by at least 20 percent. They contend that the savings to customers as a result of this decline is more than ANR's gain through its overcollection of its actual fuel costs.

17. Second, they contend that the three and four year averaging methodology has the effect of smoothing out the changes in fuel rates from year to year, resulting in more predictable and stable rates for ANR's customers. This is because the impact on fuel rates resulting from a change in fuel use in any one year is diluted by averaging that year's fuel use with the fuel used during the previous two (or three) year period.

18. Before addressing the parties' specific contentions on these two issues, the Commission clarifies its policy concerning the tracking of individual cost-of-service items. The Commission generally does not permit pipelines to change any single component of their cost-of-service outside of a general section 4 rate case. A primary reason for this policy is that, while one component of the cost-of-service may have increased, others may have declined. In a general section 4 rate case, all components of the cost-of-service may be considered and any decreases in an individual cost component can be offset against increases in other cost components.

19. However, we have permitted an exception to this policy for a few cost items that are subject to significant changes from year to year and are thus particularly difficult to project. One such cost item is fuel. As discussed in the July 13, 2004 Order, section 154.403 of the Commission's regulations permits a pipeline to adjust fuel retention percentages in periodic limited rate filing pursuant to a methodology set forth in the pipeline's tariff. Most pipelines have implemented such tariff provisions. However, there are still four pipelines without any provision for changing their fuel retention percentage outside of a section 4 rate case.<sup>25</sup>

20. Section 154.403(c)(11) of the Commission's regulations requires that, if the pipeline does have a tariff provision for periodic changes in its fuel retention percentage, the tariff must include a statement about whether over and underrecoveries will be trueed up in a future surcharge. However, that regulation does not expressly require that pipelines include a true-up mechanism as part of a tariff provision permitting periodic adjustments to their fuel retention percentages. Rather, the Commission has dealt with

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<sup>25</sup> Tennessee Gas Pipeline Company, Gulf South Pipeline Company, L.P., Natural Gas Pipeline Company of America, and Midwestern Gas Transmission Company do not employ fuel trackers with a true-up mechanism. Their fuel costs are established in a general NGA section 4 rate case.



this issue on a case-by-case basis. As the Commission stated in *Northern Natural Gas Co.*, (*Northern Natural*) “[t]he Commission requires a fuel true-up mechanism when required by the facts of the case, as here.”<sup>26</sup>

21. The issue of whether the Commission should require a true-up mechanism has rarely arisen in individual cases, since almost all pipelines with tariff provisions requiring them to make periodic limited filings to adjust their fuel retention percentages have also voluntarily included a true-up mechanism.<sup>27</sup> As already described, in its 1997 order concerning ANR’s fuel retention provisions, the Commission stated that it would consider requiring a true-up mechanism if a pattern of overrecovery were shown. In *Northern Natural*<sup>28</sup> the Commission ordered the pipeline to include a true-up mechanism on the ground that the past fuel usage on which it based its annual usage percentage might not be representative, particularly since the pipeline had separately filed to replace older compressors with more efficient compressors.<sup>29</sup> Thus, the Commission’s current policy is, in essence, to require a true-up mechanism if either a pattern of overrecovery has been shown or there is reason to believe the projections on which the fuel retention percentages are based will be inaccurate.

22. Based on its experience with this issue in past cases, the Commission has concluded that it should modify its policy to require a true-up mechanism as part of all tariff provisions permitting adjustments to cost items outside of a general section 4 rate case, absent agreement otherwise by all interested parties. As already discussed, the Commission’s general policy is not to permit particular cost items to be modified outside of a general section 4 rate case at all, since a cost increase in one item may be offset by cost decreases in others. Allowing a particular cost item to be tracked gives the pipeline the opportunity to increase that cost item without regard to the possibility of any offsetting cost reductions. The Commission believes that in return for this opportunity, there should be an assurance that the individual cost item is, in fact, tracked accurately.

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<sup>26</sup> *Northern Natural Gas Co.*, 80 FERC ¶ 61,332 at 62,106 (1997).

<sup>27</sup> As noted by ANR in its rehearing request, two pipelines, East Tennessee Natural Gas Co. and Transwestern Pipeline Co. have tariff provisions that permit them to make filings to adjust their fuel retention percentages outside of the a section 4 rate case, and those tariff provisions do not contain true-up provisions. However, those pipelines’ tariff do not require an annual filing, with neither East Tennessee or Transwestern filing to adjust its fuel retention for a number of years.

<sup>28</sup> 80 FERC at 62,105-6.

<sup>29</sup> See also *TransColorado Gas Transmission Co.*, 85 FERC ¶ 61,387 (1998).

Having been given an opportunity to increase one cost item without regard to other cost decreases, the pipeline should not be permitted to overrecover that cost under any circumstances.

23. In addition, we believe our past cases have failed to develop a reasoned basis for identifying particular situations where a true-up mechanism need not be required. The underlying reason for excepting particular cost items from the policy of only permitting changes in general section 4 rate cases is that certain cost items may be more volatile than most and thus more difficult to project than typical cost items in the pipeline's cost-of-service. Therefore, the reason given in *Northern Natural* for requiring a true-up mechanism – potential inaccuracies in its fuel use projections – should be true with respect to any pipeline, even if there may not be a specific reason for expecting a change in fuel usage as found in that case. If there was not a significant potential for such inaccuracies, then there would be no basis to permit the pipeline to change the cost item in a periodic limited section 4 filing in the first place, and the true-up issue would not arise.

24. Also, relying on whether there has been a past pattern of overrecovery to determine whether to require a true-up mechanism requires customers, as in this case, to overcompensate the pipeline for a substantial period before the Commission would consider correcting the situation. Moreover, the very unpredictability of the level of the cost in question means that past patterns are not a reliable predictor of future activity. This is demonstrated again in this case, where in 1997 the Commission decided not to require a true-up mechanism because of a net under collection during the preceding three years, yet ANR then substantially overrecovered these costs during the next six years. With the recent escalation in natural gas prices, fuel has not only become a more significant factor in a pipeline's operating costs but also a more significant excess revenue producer absent a true-up mechanism.

25. ANR, like *Northern Natural* in its case, contends that a reason not to require a true-up mechanism is that requiring the pipeline to true up over and under recoveries reduces the pipeline's incentive to minimize costs and operate efficiently. It is true that our Part 284 regulations require pipelines to design their rates based on estimated units of service, without any type of true-up mechanism. *See* 18 C.F.R. §284.10(c)(2). The Commission has described the purpose of this requirement as follows:

As discussed in Order No. 436, this requirement means that the pipeline is at risk for under-recovery of its costs between rate cases, and may retain any over-recovery. This gives the pipeline an incentive both to minimize

its costs and maximize the service it provides. A cost tracker would undercut these incentives by guaranteeing the pipeline a set revenue recovery.<sup>30</sup>

26. However, under that policy, the Commission does not permit the pipeline to make any adjustment to its rates to account for changes in individual cost items, except in a general section 4 rate case. Thus, permitting a pipeline to make periodic limited section 4 filings to change a particular cost item, even without a true-up mechanism, is an exception to that policy. For the reasons discussed above, we have concluded that once a pipeline is permitted an exception to that policy so that it may track changes in a particular cost item without regard to changes in other cost items, then there should be a guarantee that changes in that cost item are tracked accurately. This can only be accomplished if the tracking mechanism includes a provision for truing up over and underrecoveries.

27. Requiring a true-up mechanism does not remove all incentives for the pipeline to reduce its fuel use. Pipelines do face at least some competitive pressures in obtaining marginal throughput, for example obtaining customers with access to alternate fuels. Because the Commission has held that pipelines may not discount their fuel use and L&U retention percentages since those costs are variable, the only way a pipeline can reduce its fuel retention percentages in order to help obtain marginal business is by reducing its fuel usage. This contrasts with most of the other cost items underlying the pipelines' rates, which are fixed and thus can be discounted in order to obtain marginal business. Moreover, in *Northern Natural*, the Commission has already rejected a pipeline's contention that true-up mechanisms should not be required in fuel tracking mechanisms, since a true-up would eliminate its incentive to reduce fuel costs through capital improvements. The Commission stated, "the true-up should also not result in disincentives to Northern Natural making capital improvements on its system, since the PRA is only supposed to return to Northern Natural its actual used fuel, and is not intended to generate income."<sup>31</sup> The Commission concludes that, at least with respect to fuel use and L&U gas, the benefits of requiring a true-up provision as part of any periodic tracking mechanism outweighs any disadvantages.

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<sup>30</sup> See *Canyon Creek Compression Co.*, 99 FERC ¶ 61,351 at P 14 (2002). See also *Florida Gas Transmission Co.*, 105 FERC ¶ 61,171 at P 47 (2003).

<sup>31</sup> *Northern Natural*, 80 FERC at 62,106. PRA stands for Periodic Rate Adjustment.

28. However, the Commission emphasizes that it is not adopting a policy of requiring all pipelines to track their fuel costs. The Commission is only requiring that, if a pipeline chooses to track fuel costs in periodic limited section 4 rate case or it is ordered to do so by the Commission as a result of a section 5 investigation, the fuel tracker must include a true-up provision. If ANR, or any other pipeline, desires to take full advantage of the incentives underlying our general ratemaking policy described above, then they are free to establish their fuel use retention percentage in a general section 4 rate case and leave it unchanged until the next general section 4 rate case. We now turn to the parties' more specific contentions in this case.

## 1. Efficiency Incentive

### a. Arguments of the Parties

29. ANR argues that the fact that it has overcollected its costs does not, *ipso facto*, render the mechanism unjust and unreasonable. ANR contends that, to the contrary, the fact that it has been able to overcollect its fuels costs illustrates that the mechanism has worked as intended, and in a manner that is consistent with cost-based ratemaking principles.<sup>32</sup> ANR points to precedent to support its position that the fact that over or under collections will occur is an accepted feature of rate making<sup>33</sup> and is consistent with the Commission's traditional ratemaking principles.<sup>34</sup> ANR argues that the possibility of ANR overcollecting its fuel costs was contemplated when the mechanism was approved and the fact that this has occurred does not make its mechanism unjust and unreasonable. Rather, ANR contends the overcollection must be viewed in the context of, and in concert with, the purpose of the mechanism and its impact on ANR's customers.

30. According to ANR the main purpose of the mechanism and the Commission's ratemaking methodology is to provide pipelines with the incentive to become more efficient by reducing their costs. ANR argues that the mechanism as currently designed

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<sup>32</sup> ANR Rehearing at 6. For example, ANR states that, under traditional cost-based ratemaking principles, pipelines generally either under or over collect their costs between rate cases. Under the ratemaking principles utilized by the Commission, ANR states that, a pipeline's rates are designed on the basis of projected costs and revenues. ANR explains that to the extent that actual experience differs from such projections, the pipeline will either under or over collect its costs.

<sup>33</sup> ANR Rehearing at 6 (*citing Pennsylvania Office of Consumer Advocate v. FERC*, 131 F.3d 182,187 (D.C. Cir. 1997)).

<sup>34</sup> ANR Rehearing at 6 (*citing ANR Pipeline Co*, 78 FERC ¶ 61,290 at 61,267 (1997)).

has created an incentive for ANR to undertake measures to operate more efficiently. Specifically, ANR states that, in order to reduce fuel rates, it has operated its compressors in a more efficient manner and has incurred the cost of various measures that have reduced the amount of L&U gas.<sup>35</sup> ANR attached certain data to its rehearing request that it believes shows that as a result of its efforts, ANR's operations have become more efficient and its customers have enjoyed substantial cost savings.<sup>36</sup>

31. ANR states that it calculated the total dollar savings to its customers as a result of the fuel rate decreases over the same two years of fuel recovery referred to by the Commission in the July 13, 2004 Order. Specifically, for the 2002-2003 period of fuel recovery, in contrast to the Commission's calculation that ANR had an approximate overrecovery of \$22.6 million, ANR states that its customers have saved over \$26.9 million. ANR submits that, even if the Commission's analysis was correct, ANR's customers have benefited to a greater degree than ANR. ANR asserts that the savings to its customers would not have been possible if it were not for the incentives created by the existing methodology for ANR to become more efficient. ANR submits the fact that it may have overcollected is not an unjust and unreasonable outcome but is a necessary and positive byproduct of a mechanism that produced substantial savings for ANR's customers.

32. WDG states that its members and other customers have experienced benefits and savings through substantially reduced fuel payment obligations. WDG states that ANR's overall annual fuel collections have decreased from 53-55 Bcf to 33-36 Bcf. During that

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<sup>35</sup> ANR states that it has upgraded metering facilities, replaced orifice meters with turbine meters to improve the accuracy of measurement, added metering to existing meter stations to capture lower flow that had been previously unmeasurable, upgraded an/or replaced instrumentation used in the determination of gas quality properties, installed additional chromatographs to more accurately capture changes in gas quality that would affect accurate gas measurement, upgraded software and hardware related to measurement Remote Terminal Units (RTUs), added check meters across the system to isolate and correct L&U gas issues and upgraded measurement facilities on the inlets and outlets of gas processing plants. ANR Rehearing at 7 and note 6.

<sup>36</sup> ANR attached to its rehearing request an Exhibit A that includes four graphs demonstrating the reduction in L&U gas and ANR's fuel rates on three of its most commonly used long-haul routes from the supply areas on the ANR system. ANR states that the graphs show the decline in rates during the same 1996-2004 timeframe examined by Indicated Shippers in their comments and illustrate a 33% reduction in L&U gas and a substantial decrease in fuel rates. *See* ANR Rehearing at 8.

same time period, WDG claims that ANR's fuel percentage in the market area alone dropped by more than 20 percent in part because the existing mechanism has an embedded incentive for ANR to be fuel efficient.<sup>37</sup>

33. Consumers, Dominion, MichCon, and SEMCO support the contentions of ANR and WDG. Contrary to the positions of the parties supporting ANR and WDG, ExxonMobil argues that ANR's incentive structure to reduce fuel cannot be sustained over time because eventually ANR will reach a break-even point when it will under recover fuel. ExxonMobil contends that at that point, a pipeline could manufacturer so-called efficiencies by removing necessary compression from service or if the pipeline is losing money, it could file under section 4 to change its tariff. ExxonMobil acknowledges that while there have been efficiency savings for shippers in the past, these savings have come at too high a price, and such efficiency gains cannot be continued indefinitely into the future.

34. Indicated Shippers, BP Energy and AGLC also oppose the position of the parties supporting ANR and WDG. Specifically, Indicated Shippers argue that not all of the cumulative reduction in fuel since 1997 of approximately 82.6 Bcf claimed by ANR and WDG is specifically related to ANR's efficiency. Indicated Shippers contend that based on WDG's Request for Rehearing,<sup>38</sup> between 1997 and 2003, the Southeast Area/Southeast Leg transportation quantities decreased by approximately 400 Bcf and that during this same period, the fuel in the Southeast Area and Southeast Leg dropped commensurately. Therefore, Indicated Shippers argue that it appears the vast bulk of the reduction in ANR's fuel has been attributable to the reduction in throughput out of the Southeast Area. Indicated Shippers contend that approximately 80 percent of the reduction in fuel in 1997 and 2003 on ANR's system is attributable to the reduction in throughput from the Southeast Area.<sup>39</sup>

35. AGLC contends that ANR's current fuel methodology is essentially an incentive ratemaking program, which the Commission has not approved for ANR.<sup>40</sup> AGLC argues that neither ANR nor WDG offered any evidence to demonstrate that such reductions in fuel use could not have been achieved under a fuel recovery methodology with a true-up mechanism. AGLC asserts that ANR is obligated to operate its system in the most efficient manner possible and must live up to this duty regardless of whether it has been

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<sup>37</sup> WDG Rehearing at 2.

<sup>38</sup> See Attachment 1, page 3 in WDG's August 12, 2004 Rehearing Request.

<sup>39</sup> See Table I, page 2 in Indicated Shippers' Comments filed October 25, 2004.

<sup>40</sup> *Incentive Ratemaking for Interstate Natural Gas Pipelines, Oil Pipelines, and Electric Utilities*, 61 FERC ¶ 61,168 (1992).

motivated to do so by the possibility of overrecovering fuel.<sup>41</sup> AGLC contends that the fuel savings came with a high price that between 1997-2003 ANR overrecovered 32.1 Bcf which it estimates is valued at approximately \$94.8 million.

36. AGLC contends that Commission policy favors use of true-up mechanism to remedy consistent overrecoveries. To support its claims, AGLC cites to an ANR order in which the Commission recognized that a change in circumstances on ANR's fuel mechanism would warrant a review of ANR's fuel methodology, including a true-up mechanism<sup>42</sup> AGLC argues that the record in this proceeding demonstrates that circumstances on ANR's system have fundamentally changed in recent years and that, in light of these changed circumstances, a true-up mechanism is needed to protect customers from overrecoveries.

### **b. Commission Ruling**

37. While ANR and its supporters attribute its reduced fuel use to the incentives built into its current fuel tariff mechanism, the Commission finds nothing in the current record to clearly tie any reductions in fuel use to the existing fuel tariff mechanism. Nor does the Commission see any reason to believe that allowing ANR to overrecover fuel from its customers with a value approaching \$100 million was a necessary incentive for it to minimize its use of fuel use and L&U gas.

38. A review of the data supplied by ANR concerning its fuel use<sup>43</sup> shows that ANR's fuel use averaged about 47 Bcf during the period 1995-1997 with no clear trend up or down, and then dropped by 11.1 Bcf to 35.95 Bcf in 1998 and since then has averaged about 33.9 Bcf with no clear trend up or down. Thus, the only significant reduction in ANR's fuel use occurred in 1998.<sup>44</sup> It is not clear that the reduction was connected in any way with the fact ANR is not required to true-up its over or underrecoveries, and not due to other operational changes on its system, such as changes in gas flows into ANR's market area resulting from increased deliveries of Canadian gas or reduced throughput on various parts of its system, which would reduce fuel use.

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<sup>41</sup> *El Paso Natural Gas Co. v. FPC*, 281 F.2d 567, 573 (5<sup>th</sup> Cir. 1960) (cited in *Trunkline LNG Co.*, 45 FERC ¶ 61,256 at 61,787 (1988) “[i]t is the obligation of all regulated public utilities to operate with all reasonable economies.”

<sup>42</sup> *ANR Pipeline Co.*, 78 FERC ¶ 61,290 at 62,267 (1997).

<sup>43</sup> See the Appendix to this order.

<sup>44</sup> There was a reduction in total fuel used in 2002 from 37.6 Bcf to 27.8 Bcf, but then in 2003 returned to 35.8 Bcf, which was approximately the previous level.

39. If ANR desired, it could have expressly proposed its fuel recovery mechanism as an incentive ratemaking proposal pursuant to the Commission's incentive ratemaking policy, but it did not.<sup>45</sup> That policy requires, among other things, that incentive ratemaking proposals include an explicit statement of their performance standards, a method for evaluating the proposal, and a commitment by the pipeline that it will continue in the program for a specified length of time.<sup>46</sup> ANR's fuel mechanism does not comply with any of these requirements. If it had included a statement of performance standards and a provision for evaluating whether those standards were being met, then it would have been possible to determine the extent to which ANR's reductions in fuel use were the result of its fuel use mechanism. ANR having failed to propose its current mechanism consistent with the Commission's policy for incentive ratemaking, the Commission is unwilling now to treat it as justifiable as an incentive rate proposal.

40. In considering whether ANR's current mechanism may be considered to benefit its customers, the Commission considers it of some significance that the customers who filed in support of ANR's current fuel tracking mechanism are all regulated LDCs with market power. Such customers do not incur the same risk in paying higher fuel costs, as ANR's other customers such as producers and marketers, who make sales solely in the competitive unbundled commodity market and thus lack market power. Further, as natural gas prices rise, as they have in recent years, producers and marketers who are at risk for the higher fuel prices have an even greater interest in minimizing those costs. All the producers and marketers who commented in this proceeding oppose ANR's existing fuel mechanism and disagree with the notion that they are benefited by that mechanism.<sup>47</sup> Since these customers are at greater risk for recovery of ANR's substantial fuel costs, the Commission places more weight on their comments.

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<sup>45</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996).

<sup>46</sup> *Id.* at 61,238.

<sup>47</sup> Parties supporting the Commission's position that ANR's fuel mechanism should include a true-up mechanism are: AGLC, Duke, ExxonMobil, and Indicated Shippers.



41. ANR, as other interstate pipelines, is required under the long-standing principle of pipeline regulation to operate its system efficiently and has a duty to minimize all costs.<sup>48</sup> Variable costs such as fuel are not intended to be a profit center. As the Commission found in the July 13, 2004 Order, just based on the last two years of high gas prices, ANR overcollected 3.5 Bcf of gas representing approximately \$22.6 million.<sup>49</sup> The Commission concludes that, consistent with our revised policy set forth above, that the incentive ratemaking argument made by ANR and WDG does not justify granting rehearing of our holding that ANR must implement a mechanism to true up over- and underrecoveries of fuel.

## **2. Smoothing Effect**

### **a. Arguments of the Parties**

42. ANR and WDG argue that the Commission failed to address and consider the fact that the current mechanism has benefited ANR's customers by smoothing out the year-to-year variations in ANR's fuel retention percentages. They point out that the use of the three and four-year historical averages to re-determine annually ANR's fuel retention percentages dilutes the impact of any single year's usage on the level of the fuel retention percentage. Thus, a wide variation in usage in a single year would not lead to as great a change in the following year's percentage as if the redetermination were based on a single year's usage. They argue that, as a result of ANR's use of three- and four-year averages, its fuel retention percentages have been more stable than those of other pipelines.<sup>50</sup> As an example, WDG's request for rehearing contain a chart showing that ANR's fuel use rates have varied less from year to year than those of Viking Gas Transmission Company (Viking) which employs an annual true-up cost recovery mechanism. MichCon supports these contentions.

### **b. Commission Ruling**

43. The Commission has not found ANR's three and four year averaging methodology to be unjust and unreasonable or required ANR to change that part of its fuel recovery mechanism. The Commission has only found that ANR's failure to have a true-up mechanism for over and underrecoveries of fuel is unjust and unreasonable, since the lack

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<sup>48</sup> *Office of Consumers' Counsel v. FERC*, 914 F.2d 290, 292 (D.C. Cir. 1990) (citing *Midwestern Gas Transmission Co.*, 30 FERC ¶ 61,260, at 61,542-543 (1985). See also, *ANR Pipeline Co.*, 82 FERC ¶ 61,248 at 61,979-80 (1998).

<sup>49</sup> July 13, 2004 Order at P 15.

<sup>50</sup> WDG Rehearing at 10-11.

of a true-up mechanism has enabled ANR to vastly overrecover its fuel costs. The Commission does not regard a smoothed out charge that consistently overrecovers fuel costs as a benefit to customers. However, should ANR wish to retain the smoothing effect of using multiple year averages to determine its fuel retention percentages, including spreading the true-up of over and underrecoveries over a period of more than a year, it may propose to do so.

### **B. Compliance Filing to Develop Just and Reasonable Replacement Tariff**

44. In compliance with the Commission's directives, ANR filed *pro forma* tariff sheets proposing a new section 36 of its GT&C, to implement a fuel use and L&U gas tracking mechanism with a true-up mechanism for transportation and storage services. ANR proposes to continue its existing procedure of submitting its annual fuel use filing on March 1 to be effective April 1 of each year. ANR's proposed fuel use filing will be based on the previous calendar year's fuel use and L&U gas, using transactional throughput. ANR proposes that the transporter use (%) for transportation and storage service be divided into two components: (1) the current fuel use percentage and (2) the annual transporter use volumetric surcharge, which implements the true-up mechanism for over/under recoveries during the previous calendar year.

45. The current fuel use percentage for transportation service is the sum of the current fuel use (%) and the current L&U (%) and is determined by dividing the fuel attributable to that component and rate segment for the previous calendar year by the total transactional throughput for the same 12 month period. ANR proposes to adjust the fuel use (%) and L&U (%) by known and measurable changes for the 12-month period beginning on the effective date of the filing. To calculate the transporter's current use percentage for storage services, ANR will divide the fuel use attributable to storage operations for the previous calendar year by the transactional throughput for the previous calendar year. ANR also proposes to adjust the transporter use (%) for storage services by known and measurable changes for the 12-month period beginning on the effective date of the filing.

46. ANR proposes to establish a Deferred Transporter's Use Account with the appropriate subaccounts to separately track over or under collections of fuel use and L&U gas related to transportation and storage service. The Deferred Transporter's Use Account (as tracked by the Annual Transporter's Use Surcharge (%)) would serve as the true-up mechanism. ANR proposes to increase or decrease the applicable subaccount on a monthly basis based on the difference between the amount of gas ANR collects and the actual quantities it expends for compressor fuel use and L&U gas. To calculate the transporter's use surcharge for each transportation rate segment and storage service, ANR

proposes that the over/under recoveries would be divided by the sum of such over/under recoveries and the transactional throughput for the previous calendar year, as adjusted by the estimates for the subsequent three-month period, beginning on the effective date of the filing.

47. In addition, ANR requests authority to buy or sell gas used or retained for fuel use and L&U gas and to buy or sell gas when necessary to maintain system pressure and line pack or to otherwise protect the operational integrity of its system. ANR proposes that such sales be unbundled and that the sales be made at receipt points, which are defined in ANR's tariff to be either (a) its two production area headstations, where gas is aggregated and sold to downstream shippers, (b) the point of injection/withdrawal, or (c) a point on ANR's system where gas enters ANR's facilities and is metered.

48. ANR proposes to reallocate the transactional throughput associated with its transportation agreement with CenterPoint Energy Transmission Company (CenterPoint). ANR explains that it uses the CenterPoint capacity as a crossover between the Southwest and Southeast Mainline legs of its system. ANR states that this crossover capability allows ANR to balance its system with additional operational flexibility and reliability. Currently, fuel use and L&U gas provided by ANR to CenterPoint is allocated to the Southeast Mainline, but the transactional throughput associated with this contract is assigned to the Southwest Mainlines. To correct this mismatch, ANR proposes to assign the transactional throughput associated with ANR's utilization of the CenterPoint capacity to the Southeast Mainline.

49. The Commission accepts ANR's proposed fuel tracker with the true-up provision subject to certain modifications. As more fully discussed below, ANR will be required to revise the *pro forma* tariff sheets to ensure that its proposed fuel tracker with the true-up provision is just and reasonable and consistent with Commission policy. In the preceding section, the Commission has reaffirmed its holding that ANR's existing tariff provisions concerning the tracking of fuel use and L&U gas are unjust and unreasonable because they lack any true-up provision. ANR's instant compliance filing represents its proposal as to how to revise its tariff to render the provisions just and reasonable. While the Commission is acting here under section 5, in considering the protests to ANR's compliance filing, the Commission also takes into account the fact that the NGA delegates to the pipeline the primary initiative to propose the rates, terms, and conditions for its services under NGA section 4. If the rates, terms, and conditions proposed by the pipeline are just and reasonable, the Commission must accept them, regardless of whether

other rates, terms, and conditions may be just and reasonable.<sup>51</sup> Therefore, to the extent ANR's proposed remedy is just and reasonable, the Commission will accept ANR's proposal even if other remedial provisions might also be just and reasonable.

## **1. Transportation Use Percentage**

### **a. Arguments of the Parties**

50. WDG contends that ANR should calculate the transporter's use percentage using the current three and four year averaging technique instead of the proposed one-year basis for calculating fuel use. WDG argues that the averaging approach smoothes out the volatility and unpredictability of only using one year of data and therefore the one-year approach should be rejected. WDG also argues that ANR should use the same averaging technique to the extent that a true-up surcharge is required by the Commission to calculate ANR's annual surcharge percentage. WDG contends that by implementing the annual surcharge percentage on a forward three-year recovery period basis any year-to-year volatility in the amount of the annual surcharge percentage would be smoothed out to the benefit of ANR in the case of an over collection and to the benefit of ANR's customers in the case of an under collection.

### **b. Commission Ruling**

51. As discussed in the previous section of this order, the Commission has found under section 5, that ANR's lack of a true-up mechanism is unjust and unreasonable. The Commission has not found that ANR's use of average fuel use and L&U data for the three and four year periods is unjust and unreasonable. However, in proposing to remedy the lack of a true-up mechanism, ANR has determined that calculating the current Transporter Use (%) based on the data for the most recent calendar year is preferable. The Commission finds that this proposal is just and reasonable even though it might also be just and reasonable to continue the use of the three and four year average data. Use of the most recent calendar year data is likely to produce a more accurate projection of actual use during the next year, then the use of three and four year average. As a result, it is reasonable to believe using the most recent calendar year data is more likely to minimize the need for substantial true-up surcharges. In addition, the Commission has historically approved fuel trackers with true-up mechanisms based on one year of data as

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<sup>51</sup> *Consolidated Edison Co. v FERC*, 165 F. 3d 992, 998, 1002-1004 (D.C. Cir. 1999) and cases cited.

just and reasonable. WDG has failed to present any evidence to require ANR to continue the existing three and four year averaging for fuel use and L&U gas in lieu of the Commission's approved methodology of basing a true-up mechanism on one year of data.<sup>52</sup>

## **2. Adjustments for Known and Measurable Changes**

### **a. Arguments of the Parties**

52. ExxonMobil objects to ANR's proposed use of "estimates" to cover the three-month period between December 1 and March 31 for its annual filing,<sup>53</sup> contending that estimates are discretionary and could skew the rate calculation in an unjust and unreasonable manner.

53. WDG contends the Commission should reject ANR's proposal to allow compressor fuel use, L&U gas, and annual transactional throughput for the previous year to be "adjusted for any known and measurable changes for the 12-month period beginning on the effective date of the filing."<sup>54</sup> WDG argues ANR should use a surcharge that is implemented on April 1<sup>st</sup> of every year based upon actual verifiable over or under collection data, as ANR currently does under its existing fuel recovery mechanism for transactions between January 1<sup>st</sup> through December 31<sup>st</sup> during the previous year, with no estimates added for January through March activity. WDG also contends that the current effective methodology is based on actual data and there is no reason to depart from using actual data. WDG further contends that ANR has offered no basis or rationale of using estimates and adjustments for its Deferred Transporter's Use subaccount for the subsequent three-month period.<sup>55</sup>

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<sup>52</sup> Based on the results of its fuel tracker and true-up mechanism, ANR can propose changes to the tracking mechanism in a limited section 4 filing, with supporting documentation and justification.

<sup>53</sup> ANR at sections 36(d) (3) and (4) proposes to adjust the transporter's use subaccount as of December 31 by the estimates for the subsequent three month period.

<sup>54</sup> Section 36(c)(1) of the GT&C of ANR's *pro forma* tariff.

<sup>55</sup> Section 36(d)(3) and (4) of the GT&C of ANR's *pro forma* tariff.

### **b. Commission Ruling**

54. The Commission rejects ANR's proposal at section 36(d)(3) and (4) of the *pro forma* tariff sheets<sup>56</sup> to adjust the December 31 balance in the Deferred Fuel Transporter's subaccounts for estimates for the subsequent three-month period. We find that this proposal allows too much discretion on ANR's part. However, if an adjustment to the balance in the deferred account is required, ANR can propose such an adjustment with a fully supported explanation in its fuel use filing.

### **3. Buy/Sell Gas**

#### **a. Arguments of the Parties**

55. Indicated Shippers assert that ANR has not demonstrated the need for any additional authorization under its tariff to make operational purchases and sales of gas. Indicated Shippers contend that ANR already has the authority to buy and sell gas to manage imbalance quantities pursuant to ANR's existing cashout mechanism in section 15 of its GT&C. Indicated Shippers further contend that ANR's proposal to sell gas has additional rate implications that would require additional investigation before the Commission could permit ANR to recover additional revenues on these rate base items. For these reasons, Indicated Shippers assert that ANR's proposal for the sale of excess gas should be rejected.

56. ExxonMobil contends that ANR's proposal to buy and sell gas that is used or retained for fuel and/or necessary to maintain system pressure and line pack should be subject to the conditions the Commission has imposed on other pipelines.<sup>57</sup>

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<sup>56</sup> See Fourth Revised Sheet No. 194.

<sup>57</sup> See, e.g., *Colorado Interstate Gas Co.*, 107 FERC ¶ 61,312 (2004) and *Dominion Transmission, Inc.*, 106 FERC ¶ 61,029 (2004). These conditions include: (a) the posting and bidding procedures for the purchase and sale of gas for operational purposes; (b) operational purchases or sales having a lower transportation priority than firm sales and clarification that there will be no transportation associated with its operational purchases or sales; (c) specific circumstances in which the pipeline would perform an operational purchase or sale listed in the tariff; (d) operational sales service is unbundled from transportation service and (e) filing an annual report of sales and purchases and revenues derived from the sale of gas being credited to shippers, with the report indicating the source of the gas, date of the purchase/sale, volumes, purchase/sale price, costs and revenue from the purchase/sale, and the disposition of the costs and revenues.

### **b. Commission Ruling**

57. ANR proposes<sup>58</sup> to purchase and sell gas retained for compressor fuel use and L&U gas when necessary to maintain system pressure and line pack or to protect the operational integrity of its system, with such sales made at receipt points. The Commission has allowed other pipelines to sell fuel use gas, but has imposed various conditions on the sale of such gas and has not permitted a blank slate on the sales as proposed by ANR. Consistent with prior Commission rulings,<sup>59</sup> the Commission will allow ANR to purchase and sell gas for operational reasons, however, ANR is required to revise its tariff to provide:

- a. Posting and bidding procedures for the purchase and sale of gas for operational purposes.
- b. Operational purchases or sales should have a lower transportation priority than firm sales.
- c. Clarification that there will be no transportation service associated with its operational purchases or sales of gas.
- d. Specification in the tariff of the circumstances under which ANR would perform an operational purchases or sale.
- e. Operational sales service must be unbundled from transportation service.
- f. Filing of an annual report of sales and purchases and revenues derived from the sale of gas, and the crediting of the revenues from such sales to ANR's shippers. The report must indicate the source of the gas, date of the purchase/sale volumes, purchase/sale price, costs and revenues from the purchase/sale, and the disposition of the costs and revenue.

## **4. Transactional vs. Actual Throughput**

### **a. Arguments of the Parties**

58. Indicated Shippers contend in its protest that ANR should be required to use actual throughput in calculating the fuel charge instead of the proposed transactional throughput which it claims is unnecessarily complex. Indicated Shippers argue that the use of actual throughput in deriving the fuel charge would make it easier for parties to verify whether the fuel mechanism is working properly and is being applied to all appropriate volumes. Indicated Shippers further contend that the use of actual throughput and actual fuel

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<sup>58</sup> See Fourth Revised Sheet No. 194, section 36 (e) of the *pro forma* tariffs.

<sup>59</sup> *Supra* n 57.

consumption volumes would permit shippers to compare fuel calculations to the data in ANR's Form No. 2. Indicated Shippers argue that ANR has not demonstrated that the use of transactional throughput in lieu of actual throughput is just and reasonable.

59. In response to Indicated Shippers' protest, WDG argues in its limited reply comments that reverting to the use of actual metered throughput would be a step back from the added accuracy and lower fuel percentages that have resulted from ANR's use of the transactional throughput methodology.<sup>60</sup> WDG provided the following explanations on the use of transactional throughput to derive fuel rates and why it benefits all shippers on ANR's system. Specifically, WDG explains that the use of metered throughput resulted in a discrepancy between the volumes used by ANR as billing determinants to calculate fuel charges and the volumes on which shippers were assessed fuel. According to WDG, since ANR's fuel charges were based on billing determinants reflecting only actual volumes metered on a forward haul basis, net physical metered throughput was lower than the transactional volumes on which fuel percentages were assessed, due, for example to backhauls and displacements. WDG states that, under basic principles of ratemaking, the lower billing determinants derived from metered throughput led to a higher per unit fuel charge. When this higher per unit charge was then assessed on the greater transactional throughput, WDG states that ANR would have a built-in means for overcollection.<sup>61</sup> Therefore, to remedy this mismatch between the volumes used by ANR to calculate fuel charges and the volumes on which shippers were assessed fuel charges, WDG claims the Commission approved the transactional throughput methodology, whereby ANR would base fuel charges on transactional

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<sup>60</sup> WDG explains that ANR currently uses the transactional throughput methodology as a result of the outcome of a technical conference that was held in Docket No. TM97-2-48-000 to resolve issues surrounding ANR's annual fuel use re-determination filing.

<sup>61</sup> WDG Limited Reply Comments at 2. WDG states that irrespective of whether there is a true-up on ANR's fuel recoveries, the ultimate goal should be in the first instance to derive the fuel rates least likely to result in over or under collections. By matching billing determinants with transactions on which fuel is actually assessed, WDG states that this enhances the likely accuracy of ANR's fuel percentages. .



throughput volumes.<sup>62</sup> WDG states that using the transactional throughput has eliminated the inaccuracies that previously plagued ANR's prior calculation of fuel rates and has also resulted in lower fuel rates.

60. Responding to WDG's opposition to changing or examining the existing transactional throughput methodology, Indicated Shippers contend in its reply comments that WDG raises factual issues (claiming that ANR has not made similar assertions) with no support<sup>63</sup> and therefore requiring further procedures. Indicated Shippers also contend the transactional throughput methodology was experimental and to be reviewed after a two-year trial period,<sup>64</sup> which was subsequently extended until this year when the Commission specifically stated that the fuel tracker was to be reviewed and a true-up mechanism would be considered. Consequently, Indicated Shippers argue that WDG's attempt to shut-down a review of the transactional throughput methodology at this time constitutes a collateral attack on the Commission's prior orders.<sup>65</sup>

61. Indicated Shippers argue that using actual or GMV (or Gross Metered Volumes) is preferable to using the transactional throughput methodology because using GMV with a tracking mechanism that includes a true-up would prevent ANR from overcollecting its actual fuel charges, which Indicated Shippers believe is WDG's concern. Indicated Shippers believe that using GMV for purposes of calculating fuel rates will cause all services to have to pay for their full fuel costs and some customers may find that their fuel rates have been significantly reduced when based on actual throughput versus an

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<sup>62</sup> Thus, by calculating fuel percentages based not just on the quantity of gas physically metered, but on the volume of gas under transactions upon which ANR assessed fuel charges, the transactional throughput methodology took into account backhauls and displacements that were excluded when metered throughput was used, and thus better reflected the actual usage of ANR's system. WDG Limited Reply Comments at 3 (*citing ANR Pipeline Co.*, 81 FERC ¶ 61,414 at 62,783 (1997)).

<sup>63</sup> Specifically, Indicated Shippers state that WDG makes the following factual assertions for which WDG did not supply any factual support: (1) transactional throughput is always greater than metered throughput, (2) using transactional throughput creates a more accurate basis for calculating fuel charges than does Gross Metered Volumes (GMV), and (3) using transactional throughput increases the total throughput used to calculate fuel rates.

<sup>64</sup> *See* 81 FERC at 62,872 (1997).

<sup>65</sup> Indicated Shippers Reply Comments at 1.

assumed throughput. Consequently, Indicated Shippers argue the Commission should reject the continued use of the transactional throughput methodology, which they claim has, in large part, allowed ANR to overcollect actual fuel costs by very substantial amounts.

**b. Commission Ruling**

62. ANR has not proposed to change its existing methodology which uses transactional throughput to determine its fuel use and L&U percentages. However, Indicated Shippers is asking the Commission to take NGA section 5 action to change the current method of measuring throughput on ANR's system with no support for its request. We find that Indicated Shippers has not satisfied its burden to support changing the current method. To the contrary, we find that ANR has complied with the Commission's July 13, 2004 Order on this issue. We did not require ANR to change its transactional throughput method of calculating its fuel use and L&U percentages.

63. ANR's use of transactional throughput, which reflects delivered quantities including displacement, exchange and backhaul activity has been in effect in various forms on ANR's system since 1998,<sup>66</sup> resulting from a settlement with WDG which Indicated Shippers has protested in previous ANR fuel use filings.<sup>67</sup> The Commission found in those proceedings that the transactional throughput method was an improvement over the GMV method because it resulted in a decrease in all fuel percentages and eliminated the mismatch between assessed volumes and the volumes used for calculating the fuel percentages.<sup>68</sup> Indicated Shippers is correct that the settlement approved by the Commission and establishing ANR's latest fuel use methodology indicated that the components of the fuel use filing which includes the transactional throughput methodology could be re-examined in ANR's fuel use filing submitted in 2004.<sup>69</sup> However, we reject Indicated Shippers request that we require ANR to use the GMV methodology since ANR did not propose such a change and Indicated Shippers has not supported its request that ANR discontinue using transactional throughput. The transactional throughput includes volumes transported by displacement and backhaul which increases ANR's total throughput, thereby decreasing the fuel use and L&U

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<sup>66</sup> *ANR Pipeline Co.*, 81 FERC ¶ 61,414 (1997) *order on rehearing*, 82 FERC ¶ 61,273 (1998); 86 FERC ¶ 61,326 (1999); and 98 FERC ¶ 61,053 (2002).

<sup>67</sup> *Id.*

<sup>68</sup> *ANR Pipeline Co.*, 81 FERC ¶ 61,414 at 62,874 (1997) *order on rehearing*, 82 FERC ¶ 61,273 at 62,067 (1998).

<sup>69</sup> *ANR Pipeline Co.*, 98 FERC ¶ 61,053 at 61,138 (2002).

percentages.<sup>70</sup> Such a ruling, that transactional throughput decreases the fuel use and L&U percentages, is consistent with previous Commission findings and Indicated Shippers has not present any information which causes the Commission to change our findings here.

## **5. Transportation on CenterPoint**

### **a. Arguments of the Parties**

64. WDG asserts that ANR's proposal does not properly deal with the complex transactional throughput issues associated with the transportation agreement between ANR and CenterPoint.<sup>71</sup> WDG contends that it is unclear from the proposed tariff revisions how ANR would define and assign the transactional throughput associated with CenterPoint. Therefore, WDG requests that the Commission direct ANR to clarify this section of the tariff. WDG claims that when transactional throughput on ANR's Southeast Leg is increased, ANR's Southwest Leg is correspondingly decreased by a quantity equal to the net physical throughput of gas moving from ANR's Southwest Leg to ANR's Southeast Leg under ANR's 858 agreement with CenterPoint.

65. Indicated Shippers are also concerned about the treatment of fuel associated with the cross-over haul by CenterPoint, contending that it is unclear whether ANR's proposal will rectify the problem. Indicated Shippers argue that ANR has not demonstrated that its treatment of CenterPoint fuel/LAUF is just and reasonable.

### **b. Commission Ruling**

66. In its compliance filing, ANR acknowledged a problem with the assignment of transactional throughput associated with its transportation agreement with CenterPoint. To correct this problem, ANR proposes to assign the transactional throughput associated with ANR's utilization of the CenterPoint capacity to its Southeast Mainline Area. Several parties agreed that the transportation agreement with CenterPoint is a recurring problem on ANR's system, however, it is unclear from the filing how the proposed solution will rectify the problem. We will therefore require ANR to provide a detailed explanation of the proposed solution and submit tariff provisions that define the

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<sup>70</sup> Throughput is the denominator in the fuel use and L&U gas equation. The larger the denominator, the lower the fuel use and L&U gas percentages.

<sup>71</sup> Section 1.68 of the GT&C of ANR's *pro forma* tariff.

applicable terms for the transactional throughput associated with the transportation agreement with CenterPoint. Parties will then have an opportunity to review the explanation and proposed tariff provisions and comment on ANR's proposal.

## **6. Cashout Proceeding**

67. Indicated Shippers argue that ANR should not be permitted to tie the outcome of the proposed fuel tracker to ANR's ongoing cashout proceeding pending in Docket No. RP02-335-000, in which Indicated Shippers has proposed alternative tariff changes affecting ANR's collection and sale of excess fuel.

68. We deny ANR's request to tie this proceeding to the proceedings in Docket No. RP02-335-000 concerning ANR's cashout mechanism. The Commission has already issued an order on the initial decision in that case, affirming in part and reversing in part the initial decision.<sup>72</sup> Since the Commission has already ruled on ANR's cash-out proceeding, the two cases will be processed separately and will not be tied together. Further, Indicated Shippers failed to provide any compelling reason to do otherwise.

## **7. Tariff Clarifications**

69. ExxonMobil protested the compliance filing contending that ANR failed to comply fully with the July 13, 2004 Order and the Commission's fuel recovery policies and regulations at section 154.403 of the Commission's regulations. ExxonMobil argues that ANR's use of the term "surcharge" for the true-up component of the tracker mechanism should be clarified to ensure that the surcharge could be a positive or negative adjustment to the underlying fuel rate, depending on whether there was an over or underrecovery in the prior period. Indicated Shippers contend that Commission should require ANR to revise its tariff to clearly state each component of the fuel rate (transporter's use).

70. To ensure that the parties fully understand all the terms and mechanics of ANR's fuel use mechanism, ANR is required to revise its tariff to clarify and define Deferred Transporter's Use Account and Annual Transporter's Use Surcharge (%).

## **8. Supporting Data**

71. Indicated Shippers contend that the Commission should require ANR to revise its fuel tracker at section 36(c) and its true-up mechanism at section 36(d) of its *pro forma* tariff sheets to provide a narrative explanation of how ANR measures and calculates the

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<sup>72</sup> *ANR Pipeline Co.*, 109 FERC ¶61,138 (2004).

fuel and L&U quantities and present data on material receipts and deliveries in each segment. Indicated Shippers also argue that the twelve-month period used for the date in the fuel filing should coincide with the twelve-month period included in ANR's Form No. 2. Indicated Shippers further contend that ANR should be required to use actual throughput in deriving the fuel charge, thereby making it easier for parties to verify using Form No. 2 data and determine whether the fuel mechanism is working properly and is being applied to all appropriate volumes.

72. ANR currently provides a significant amount of detailed information in its annual fuel use filing, including receipt point volumes, delivery point volumes, fuel use volumes, total actual throughput, actual throughput for each rate segment and L&U volumes. Consistent with its current fuel mechanism, ANR is required to continue providing such detailed information in its future fuel use filings to enable parties and the Commission to adequately review the filing. The Commission will deny Indicated Shippers' request that ANR be required to use actual data so that it can compare such information to the Form No. 2. As discussed above, the Commission is requiring ANR to base its fuel use filing on Form No. 2 data as adjusted by the transactional throughput which will provide parties with sufficient information to compare the fuel data to ANR's Form No. 2. Further, since ANR is basing its fuel use filing on a calendar year, twelve month basis, which matches ANR's Form No. 2, the customers will have an opportunity to compare the data.

### **9. Implementation of Fuel Tracker and True-up Mechanism**

73. The Commission will require ANR for its March 1, 2005 fuel filing to adopt the provisions established in this order for determining its fuel use and L&U percentages effective April 1, 2005. ANR will be required to: (1) base its fuel use and L&U percentages on one year of data for calendar year 2004; (2) use Form No. 2 data as adjusted by transactional throughput; (3) eliminate any reference to three months of estimated data; and (4) file the information in such a manner that parties will be able compare this data to ANR's Form No. 2. The true-up mechanism will become effective in ANR's March 1, 2006 Filing reflecting the surcharge of over and under collection of gas during the period April 1, 2005 through December 31, 2005. Subsequent annual filings should account for over/under recoveries for the entire calendar year.

The Commission orders:

(A) The requests for rehearing are denied. ANR is required to establish a fuel tracker with a true-up mechanism to establish its Transporter Use gas percentage and the L&U gas percentages, consistent with discussion in the body of this order.

(B) ANR is required within 15 days of this order, to file revised tariff sheets and further explanations, consistent with the discussion in the body of this order.

By the Commission. Commissioner Kelly not participating.

( S E A L )

Linda Mitry,  
Deputy Secretary.

