UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ANR Pipeline Company | Docket Nos. RP02-335-003 and RP02-335-004

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued April 20, 2005)

1. This case involves the determination of a just and reasonable method for addressing shipper imbalances on the interstate natural gas pipeline system of ANR Pipeline Company (ANR). Indicated Shippers and ExxonMobil Gas & Power Marketing Company, a division of ExxonMobil Corporation (ExxonMobil) requested rehearing of the Commission's November 3, 2004 Order on Initial Decision (November 3 Order)[1] which affirmed in part and reversed in part the initial decision. On rehearing, the parties want the Commission to require ANR to provide an in-kind option in conjunction with the high/low method of cashing out imbalances. Indicated Shippers want, among other things, the Commission to require ANR to play a larger role in keeping PTR (plant thermal reduction) shippers informed of their imbalances.

2. In compliance with the Commission's directives in the November 3 Order, ANR filed tariff sheets to modify its existing cashout mechanism. ExxonMobil and BP Energy Company and BP America Production Company (collectively BP), respectively, filed comments on ANR's buydown proposal to reduce historical imbalances over a 36-month period and a protest requesting adoption of an on-line auction procedure, which ANR opposes in an Answer it filed.

3. As more fully discussed below, the Commission generally denies rehearing. However, we find that our decision concerning ANR's tariff change giving PTR shippers an opportunity to net and trade imbalances arising from past period adjustments may not have gone far enough to address the problems faced by PTR shippers when they incur imbalances as a result of prior period adjustments. Consequently, the Commission will

[1] *ANR Pipeline Co.*, 109 FERC ¶ 61,138 (2004).

require ANR to file revised tariff provisions to address this problem. In addition, we will accept ANR's December 3, 2004 filing to comply with the directives in the November 3 Order, and we accept, subject to conditions, its buydown proposal. However, we will not require ANR to adopt on-line auction procedures as requested by BP. This decision benefits the public because it approves changes to ANR's cashout imbalance mechanism that will give all shippers a fair opportunity to balance their gas balance accounts and avoid cashout penalties while also deterring undesirable arbitrage behavior.

<u>Background</u>

4. Sections 15 and 16 of the General Terms and Conditions (GT&C) of ANR's tariff govern its treatment of shipper imbalances and its recovery of any costs that ANR might incur as a result of shipper imbalances. A shipper's imbalance on a pipeline system arises when the shipper delivers to the pipeline a different volume of natural gas than the shipper receives from the system. A shipper who takes more gas from the system than it delivered for transportation incurs a "negative" imbalance; a shipper who takes less gas from the system than it delivered to the pipeline incurs a "positive" imbalance. Section 15 of ANR's GT&C provides for the pipeline to cash out its shippers' monthly imbalances by either, in effect, selling gas to shippers with negative imbalances, or buying gas from shippers with positive imbalances, at an index price. This is known as "cashing out" the imbalance.

5. Section 16 of ANR's GT&C currently provides that the index price used for cashouts is determined by using the monthly average of weekly spot price indices for each of the four operational areas on the system.[2] In addition, the index price is adjusted or "tiered" so that the sales price which shippers with negative imbalances pay to ANR increases above 100 percent the larger the negative imbalance, and the purchase price ANR pays to shippers with positive imbalances decreases below 100 percent the larger the positive imbalance.[3]

6. Before the cashout takes place, each shipper is given the opportunity to make up the difference by trading its imbalance with a shipper who has an imbalance in the opposite direction. For example, a shipper who has a negative imbalance may agree with

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[2] ANR's gas supply sources lie in two distinct areas. Its Southwest area leg takes gas supply from the Texas panhandle, north-central Oklahoma and southern Kansas. Its Southeast area segment receives gas from offshore Louisiana and onshore Louisiana. The gas is moved through "headstations," where the legs meet the main trunk of the pipeline and is eventually transported to markets in Michigan, Wisconsin, Illinois, Indiana and Ohio. *Id*. at 65,023.

[3] *Id*. at 65,024 and note 1 (detailing the tiered pricing).

a shipper who has a positive imbalance to set off the two imbalances. If, after the monthly trading period is over, the shipper still has an imbalance, then it must cash out the imbalance pursuant to the above procedures.

7. Even though the cashout process brings the account of each shipper into balance at the end of the month, the pipeline system as a whole may have a gas volume imbalance. That is because the shippers in the aggregate may have either delivered more, or less, gas to ANR than they received. If the volume of gas that ANR uses to operate its system gets either too high or too low, ANR may purchase or sell gas in the open market depending upon operational conditions. Historically, shippers have tended to take more gas from the system than they put on the system, and therefore ANR has on occasion purchased gas in the open market to replenish the gas that shippers took from the system, but it has never had to sell excess gas. ANR's costs of purchasing replacement gas may not equal its net revenues from the shippers' monthly cashouts. That is because the index prices used for the cashouts may not equal the price paid by ANR to purchase replacement gas, particularly since ANR's actual purchases may occur a number of months after some of the shipper imbalances that contributed to ANR's need to purchase replacement gas. In addition, ANR's cashout payments to shippers that left too much gas on the system may not equal its cashout revenues from shippers that took too much gas.

8. To reconcile these disparities, section 15.5 of ANR's GT&C provides for it to make a filing each May 1 to reconcile its cashout activity for the prior year.[4] That filing reconciles (1) the revenues ANR has received from its cashout sales with (2) the costs it incurred as a result of its cashout purchases from shippers and any open market replacement purchases it made to replenish its gas storage inventory.[5] If the reconciliation filing shows that ANR's cost of operating the cashout program during the preceding year has exceeded its revenues, ANR implements a cashout surcharge, to be effective on June 1, which is paid by shippers who incurred imbalances during the preceding year.[6] In addition, section 15.5(b)(1) of ANR's GT&C provides for it to defer,

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[4] Unlike the monthly reconciliation that ANR provides to each shipper that is out of balance, the May 1 annual surcharge filing deals with money, not volumes of natural gas.

[5] The reconciliation would also include the revenues from any sales ANR made in the open market to eliminate excess gas. However, as previously mentioned, ANR has never had to make such sales.

[6] ANR calculates a surcharge by dividing 90 percent of the amount of the underrecovery by the total volumes during the past year that ANR cashed out -- in other words the total imbalances that were not resolved by netting and trading. Then, during the next year when ANR buys gas from a customer that left too much gas on the system during a month, the surcharge amount is subtracted from the amount that ANR would

(continued…)

or carry forward, to the following year the collection of cashout costs equal to ten percent of the gross revenues generated by the cashout activity being reconciled (the 10 percent carry forward provision). Conversely, if revenues exceed costs, ANR would refund the excess through a negative surcharge.[7]

9. In an order in ANR's 2002 annual cashout price surcharge proceeding, the Commission found under section 5 of the Natural Gas Act (NGA) that ANR's current tariff provisions for resolving imbalances are unjust and unreasonable because (1) there was too much volatility in the surcharge from year to year, and (2) PTR percentages were not known until after the fact, it was unjust and unreasonable to penalize PTR shippers for imbalances resulting from PTR differences because they would not have an opportunity to avoid and/or to net or trade to cure their imbalances.[8] The Commission then established further procedures, including a hearing before an Administrative Law Judge (ALJ), in order to determine a just and reasonable method for ANR to resolve shipper imbalances and recover the costs it incurs as a result of those imbalances.

10. At the hearing, ANR proposed three changes to its existing mechanism. First, ANR proposed switching from a monthly average index price for cashing out imbalances to a weekly high/low price. Second, ANR proposed eliminating the 10 percent carry-forward provision because of the Commission's concern that this led to volatility in the surcharge. Finally, ANR committed to endeavoring to buy or sell make-up gas in the month following the month in which the imbalance occurred, rather than wait until the gas was needed operationally.

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otherwise have to pay that shipper. When ANR sells gas to a customer that took too much gas from the system during a month, the surcharge amount is added to the amount the customer must pay to ANR. In this way, ANR recovers its net overall cost underrecovery from the previous year from shippers who incur imbalances during the following year.

[7] Pursuant to section 15.5(c), ANR calculates the negative surcharge by dividing the overrecovery by total throughput for the previous year, and this surcharge is subtracted from the rates charged to all shippers in the following year. Thus, all shippers share in the benefit of the return of the overrecovery, regardless of their level of imbalances during the preceding year.

[8] *ANR Pipeline Co.*, 101 FERC ¶ 61,123 (2002).

11. The ALJ issued an initial decision on April 12, 2004,[9] holding that: (1) ANR should be permitted to adopt a high/low index price for cashing out shipper imbalances but subject to the condition that ANR eliminate the surcharge for underrecovered costs; (2) ANR should offer shippers an option to resolve their imbalances on an in-kind basis, rather than through cashout, with a transition mechanism requiring that shippers transitioning from the cashout option to the in-kind option would pay a surcharge for amounts owed to ANR during the time they were using the cashout option; (3) ANR's proposal to make sales or purchases in the month following the month during which imbalances were incurred should be mandatory, rather than discretionary; and (4) ANR should take primary responsibility in providing PTR shippers with the necessary information to control imbalances. The ALJ rejected Indicated Shippers' proposals relating to refunds/credits derived from FSS overrun service and from sales of excess fuel and Lost and Unaccounted for gas ("LAUF"), and compensation for the use of ANR's facilities to derive such revenues. Briefs on exceptions and opposing exceptions were filed by ANR and the Indicated Shippers.

12. The Commission affirmed in part, and reversed in part, the initial decision in the November 3 Order. The Commission: (1) affirmed and approved ANR's proposal to eliminate the 10% carry-forward provision; (2) affirmed and approved ANR's proposal to buy and sell gas one month following the imbalance month, and agreed that ANR's commitment to do so should be included in the tariff; (3) reversed the ALJ on the in-kind option, finding that ANR did not have to offer an in-kind make-up option, and thereby eliminating the need for a transition mechanism to require shippers to pay cashout costs owed to ANR, because there would be no transition to in-kind make-up; (4) reversed the ALJ's finding that ANR must eliminate the annual true-up surcharge on the rationale that this will ensure that ANR must return any overrecoveries to its customers; and (5) reversed the ALJ's finding that ANR should have primary responsibility for providing

[9] *ANR Pipeline Co.*, 107 FERC ¶ 63,006 (2004). Additionally, on May 1, 2003, ANR filed in Docket No. RP03-465-000 revised tariff sheets proposing to implement an in-kind mechanism for resolving imbalances and suggested that the instant case be dismissed as moot. The Commission summarily rejected ANR's proposed tariff sheets. While not theoretically opposed to an in-kind method of resolving imbalances, the Commission found as unacceptable penalties ANR's proposals to require (1) non-PTR shippers to correct their imbalances whenever they are out of balance by more than five percent in any five-day period and (2) PTR shippers who are deficient to cure the deficiency no later than the next nomination cycle after being informed of the imbalance or pay 150% of the spot price to replace the deficient volumes because they violated section 284.12(b)(2)(v) of its regulations (18 C.F.R. §284.12(b)(2)(v) (2003)). *See ANR Pipeline Co.*, 103 FERC ¶61,252 (2003).

shipper information on PTR. Finally, the Commission affirmed the ALJ's rejection of the Indicated Shippers' proposals.

13. Indicated Shippers and ExxonMobil requested rehearing of the Commission's November 3 Order. For various reasons, both parties believe the Commission erred by not adopting an in-kind option for resolving imbalances in conjunction with the high/low methodology. In addition, Indicated Shippers believe the Commission erred by (1) not requiring ANR to play a larger role in keeping PTR shippers informed of their imbalances and (2) not approving the Indicated Shippers' proposals relating to FSS overrun service and excess fuel and LAUF gas refund/credit revenues. Also, on December 3, 2004, to comply with the Commission's directives, ANR filed tariff sheets[10] to modify its existing cashout mechanism.

14. Public notice of the compliance filing was issued, allowing for protests to be filed as provided in section 154.210 of the Commission's regulations. ExxonMobil filed comments and BP filed a protest to the compliance filing. On December 22, 2004, ANR filed an Answer to the protest of BP and the requests for rehearing of Indicated Shippers and ExxonMobil. While the Commission's Rules of Practice and Procedure generally prohibit answers to protests or answers, pursuant to Rule 213 of the Commission's regulations,[11] the Commission will accept ANR's answer in this proceeding as it relates to the compliance filing to allow a better understanding of those issues.

I. <u>Discussion of Requests for Rehearing</u>

A. <u>High/low Cashout Method Without An In-Kind Option</u>

15. Both Indicated Shippers and ExxonMobil request that the Commission reverse its decision concerning the in-kind option. Indicated Shippers' arguments will be addressed below in the section concerning PTR shippers as their arguments primarily concern the impact of our decision on the PTR shippers. However, ExxonMobil's arguments focus more generally on the issue of whether it is appropriate to permit a pipeline to use a high/low index price to cash out imbalances in the zero to five percent range, without also offering the shippers the option of resolving such imbalances on an in-kind basis.

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[10] ANR Pipeline Company: Second Revised Volume No. 1; Fourth Revised Sheet No. 137A; Fourth Revised Sheet No. 139; Fifth Revised Sheet No. 140; Fifth Revised Sheet No. 141; Third Revised Sheet No. 141A; Third Revised Sheet No. 142; and Second Revised Sheet No. 143.

[11] 18 C.F.R. § 385.213(a)(2) (2003).

16. ExxonMobil argues that the Commission's rationale for approving ANR's high/low index price proposal was flawed because the Commission failed to acknowledge that some imbalances are operational in nature and not the result of arbitrage. ExxonMobil argues that the Commission failed to address or justify how it is reasonable to penalize a minimal imbalance (*i.e.*, the standard meter measurement errors that are typically in the 0 to 2 percent range in recognition of the fact that measuring gas,[12] and thus balancing gas, is an inexact science) that is beyond the shipper's operational control. ExxonMobil argues there should be some penalty-free imbalance tolerance zone in recognition of these facts.

17. ExxonMobil also contends that the Commission erred in reversing the ALJ's requirement that ANR offer an in-kind imbalance make-up option so that the punitive effects of the high/low cashout pricing could be avoided if the shipper opted to make up its imbalance in-kind. ExxonMobil contends that offering such an option would reasonably balance the need to prevent arbitrage, on the one hand, but avoid unduly harsh penalties, on the other hand, in recognition that a certain amount of imbalances are operationally unavoidable.

18. ExxonMobil further argues that the Commission relied upon Order No. 637 for the proposition that penalties could be invoked to prevent arbitrage, but the Commission failed to cite or distinguish other language in Order No. 637, which permits pipelines to assess penalties "only to the extent necessary to prevent the impairment of reliable service."[13] ExxonMobil states the Commission cautioned in Order No. 637 that "any change beyond what is necessary to remove a customer's incentive to game the pipeline's system and unnecessarily removes a customer's flexibility would be an inappropriate penalty,"[14] and argues that the Commission ignores these aspects of Order No. 637. Further, ExxonMobil argues that the policies reflected in Order No. 637 require a balancing of shippers' interests with the pipelines' interests, which it believes the ALJ's decision achieved (a high/low cashout to prevent arbitrage with an in-kind make-up option to help mitigate the unduly harsh effects of mandatory high/low cashout for all imbalances).

19. The Commission denies rehearing on this issue. As we stated in our prior order, while the Commission is acting here under NGA section 5, the Commission also takes

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[12] ExxonMobil Rehearing at 2 (*citing* ANR Pipeline Company, FERC Gas Tariff, General Terms and Conditions, Section 12.3, First Revised Sheet No. 128).

[13] ExxonMobil Rehearing at 12 (*citing* 18 C.F.R. § 284.12(b)(2)(v) (2004)).

[14] *Id.* at n. 18 (*citing Texas Gas Transmission Corp.*, 96 FERC ¶ 61,318, at 62,218 (2001)).

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.[15] Consistent with this structure of the NGA, the Commission believes it appropriate in this case, where ANR agrees that its current tariff is unjust and unreasonable, to give ANR a similar initiative in proposing remedial tariff provisions. To the extent ANR's proposed remedy is just and reasonable, the Commission will approve that remedy, even though other just and reasonable remedies might exist. We continue to find that ANR's proposal is just and reasonable.

20. As we explained in our November 3 Order, a high/low price index is appropriately used by pipelines to eliminate the opportunity for shippers to engage in undesirable arbitrage of a pipeline's system. When price arbitrage occurs, the pipeline is, in essence, required to sell gas to its customers at below-market levels and buy gas from them at above-market levels. This can lead to the pipeline incurring a substantial underrecovery of costs, which the pipeline may then pass on to its customers. Indeed, that is exactly what has happened on ANR's system. At the hearing, ANR showed that since November 1993, the average price at which it made cashout purchases was $2.57, while the average price at which it made cashout sales was $2.33. This meant that, even before ANR purchased any gas to replace its customers' net overall overtakes of gas, its administration of the cashout program had caused it to incur a cost underrecovery during that period of about $11.5 million. ANR has been passing along these costs to its customers who incur imbalances through its annual cashout surcharge filings.

21. Using the high/low weekly index price, in place of the average monthly index price ANR currently uses, will minimize the ability of shippers to engage in arbitrage. That is because during the last week of the month the shippers will no longer have any degree of certainty whether the cashout price will be higher or lower than the market price on the day in question. As discussed in the November 3 Order, ANR presented evidence that, if its high/low index price proposal had been in effect from 1997-2002 and its customers had still incurred the same imbalances, the proposal would have produced enough revenue to recover the costs ANR incurred as a result of those imbalances, and for that reason there would have been no need for a surcharge. The Commission also believes it likely that the level of imbalances would also have been reduced with the removal of the incentive for arbitrage, and this too would have reduced the cost underrecoveries necessitating the actual surcharges that were imposed during that period. Thus, the Commission finds that the high/low weekly index proposal should benefit

[15] *Consolidated Edison Co. v. FERC*, 165 F.3d 992, 998, 1002-1004 (D.C.Cir. 1999), and cases cited.

ANR's customers by significantly reducing, and perhaps eliminating altogether, the need for such surcharges.

22. In fact, reducing or eliminating the surcharge is a particular benefit to shippers who incur imbalances, since, as summarized above, that surcharge is added to the cashout price that shippers who take too much gas during the following year must pay and subtracted from the cashout price which shippers who left gas on the system receive from the pipeline. Thus, the higher the surcharge the more unrepresentative of current market prices the cashout price will be. Reducing arbitrage through use of high/low weekly index price for all tiers should reduce or eliminate this distortion of the cashout price, thereby assisting shippers of the type described by ExxonMobil who incur relatively minimal imbalances in the first tier.

23. While ExxonMobil recognizes the value of minimizing arbitrage, it asserts that the remedy of using a high/low weekly index price should not be applied to the first tier of imbalances. However, as we also found in November 3 Order, shippers may incur imbalances in the initial tier cashed out at 100 percent of the applicable cashout index price for the purpose of arbitrage, just as they can incur greater imbalances for that purpose. Indeed, it is in the first tier that using an average monthly price would give shippers the greatest incentive to engage in arbitrage. That is because in the higher tiers the percentage adjustment to the index price would tend to reduce any price differential between the cashout price and the index price. Thus, much of the value of using a weekly high/low index price could be lost, if the high/low price index is not applied to the first tier of imbalances.

24. ExxonMobil argues on several grounds that applying the high/low index price to the first tier of imbalances leads to unduly harsh penalties for such minimal imbalances, and asserts that the option of making up these imbalances in-kind would mitigate such harsh penalties. The Commission rejects ExxonMobil's contentions for several reasons. First, ANR does not impose any form of penalty or cashout requirement on shippers' daily imbalances. Shippers thus have the flexibility to be out of balance on a daily basis without incurring any penalty. They are only required to cash out any net monthly imbalance that remains at the end of the month. As a result, during the course of a month, shippers have an opportunity to make up their imbalances on an in-kind basis. If a shipper is out of balance on a net basis toward the end of the month, the shipper may correct that net imbalance by incurring offsetting imbalances at the end of the month. In fact, the record contains evidence that shippers can, and do, seek to correct imbalances in this manner, when it is in their interest to do so.[16] Moreover, shippers have a further opportunity after the end of the month to bring themselves into balance through netting

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[16] Ex. No. ANR-20 at 5.

and trading imbalances with other shippers. Since the imbalances about which ExxonMobil is concerned are relatively small imbalances in the first tier, which it asserts are not incurred for purpose of arbitrage, the imbalances at issue should generally be curable through the netting and trading process.[17]

25. Second, making up imbalances on an in-kind basis, as sought by ExxonMobil, does not necessarily resolve imbalances in a manner that more accurately reflects the cost of the gas involved than using a high/low weekly index price. As the Commission found in *Texas Gas Transmission Corp (Texas Gas)*,[18] an in-kind method of making up net monthly imbalances will result in a customer who took too much gas from the pipeline giving the gas back during a later month when prices may be different than on the days during the month when the customer took the gas. This is particularly true during a period when prices are trending either way up or down. For example, if a shipper took too much gas early in a month when prices were trending upward, and that trend continued into the next month, the make-up gas the shipper obtains in the following month for the purpose of curing its imbalance on an in-kind basis would be more expensive than the excess gas the shipper took in the preceding month. In short, in the situation where prices are trending upward, an in-kind imbalance resolution has much the same effect as using a high/low weekly index price, where the shipper would be required to cash out the imbalance at a price higher than the market price when it took the excess gas.[19]

26. Third, the Commission rejects ExxonMobil's reliance on section 12.3 of ANR's GT&C to argue that standard meter errors are typically in the 0 to 2 percent range and therefore, shippers are unable to avoid some minimal level of imbalance. Section 12.3 of ANR's GT&C provides that, if special testing reveals that a meter is not operating "within the required tolerance level of two percent," the shipper shall not be responsible for the costs of the testing that revealed the error. That section also provides that if the

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[17] These aspects of ANR's imbalance cashout mechanism render its treatment of imbalances less burdensome on customers than other penalties typically imposed by pipelines, including scheduling penalties, unauthorized overrun penalties, and OFO penalties, which the Commission has permitted under Order No. 637. Those types of penalties are typically imposed on a daily basis, and there is no provision for customers to avoid incurring those penalties through after-the-fact netting and trading.

[18] *Texas Gas*, 97 FERC ¶ 61,349 at 62,635.

[19] The Commission does not permit use of the highest or lowest single day's price during the month because prices during any particular day of the month are less likely to be representative of prices over a broader period of the month, than the average weekly prices which the Commission has permitted to be used. *Texas Gas*, 97 FERC at 62,633.

testing shows an error in computed receipts and deliveries that is not more than two percent, then previous receipts and deliveries shall be considered accurate.

27. Further, ExxonMobil did not raise any arguments or present evidence at the hearing about the significance of section 12.3 for resolving the issues in this proceeding. Since other parties did not have an opportunity to respond or present evidence on this issue at the hearing, the Commission finds it inappropriate for ExxonMobil to raise any contention based on section 12.3 of the GT&C at this late stage of this proceeding. Moreover, ExxonMobil's rehearing request cites no evidence in the record to support its assertion as to typical meter errors on ANR's system, or that meter errors make it impossible for shippers to avoid some minimal level of imbalance. In any event, unless shown to be inaccurate, shippers must assume that the metered volumes are accurate for all purposes, including for the purpose of determining imbalances. Subsequent discovery of a meter error in the 0 to 2 percent range would not cause the shipper to be treated as out of balance, since section 12.3 provides that recorded receipts and deliveries will not be modified to correct such errors. Thus, the Commission concludes that the existence of meter error alone is not sufficient to restrict the application of the high/low cashout pricing to the 0 to 2 percent imbalance tier.

28. Fourth, to the extent that using the high/low weekly price index results in ANR overrecovering its costs of operating the cashout program, section 15.5(c) of ANR's GT&C requires it to return such overrecoveries to all its customers through a negative surcharge. That negative surcharge reduces the rates for all customers, including those who incur imbalances. Finally, any impact of the Commission's adopting high/low pricing is mitigated because ANR offers a number of imbalance management services to its customers as alternatives to resolving the imbalances by cashout both during the month and after the month. While these services may not always be available and may only be available at a cost, the Commission finds that they offer reasonable alternatives to shippers to manage their imbalances and make choices that are in their best economic interests.

29. For all of the reasons stated above, as well as the reasons stated in the November 3 Order, the Commission finds that ANR's proposed weekly high/low index price is consistent with the standards of Order No. 637. Therefore, we conclude that ANR need not offer shippers the option of resolving their imbalances on an in-kind basis.

30. Next, ExxonMobil argues the Commission failed to distinguish other pipeline cases where it has rejected overly strict imbalance penalties. ExxonMobil states that in a Transcontinental Gas Pipe Line Corp (Transco) proceeding, the Commission required Transco to demonstrate that its proposed cashout mechanism was narrowly drawn to

deter only conduct that was actually harmful to its system.[20] However, Transco is distinguishable because, in the case ExxonMobil cites, Transco was proposing to shift from a weekly high/low to 3-day high/low and to reduce the first tier tolerance to 0 to 1.5 percent. Here, ANR will continue using a high/low weekly price and is not reducing the first tier tolerance. Further, there was no showing in the Transco case that since the previous change to its cashout mechanism Transco had incurred underrecoveries, unlike here. In any event, subsequently, in Transco's Order No. 637 proceedings the Commission allowed Transco to add a 5th week to reduce arbitrage possibilities without any showing of operational problems.[21] Further, we permitted Transco to apply a high/low weekly price to the first tier of imbalances on its system because, for the same reasons as here, it will prevent undesirable behavior.[22]

31. ExxonMobil next argues that the vast majority of pipelines in the country have some imbalance tolerance that is not subject to a penalty. According to ExxonMobil, even in the *Texas Gas* case,[23] cited by the Commission in the November 3 Order, Texas Gas was permitted to implement a high/low cashout, but there is also an in-kind balancing requirement for imbalances within a 0 to 2 percent range. The Commission finds this simply reflects that various pipelines have different methods of dealing with their imbalances, and there is more than one just and reasonable way of resolving imbalance tolerances on a pipeline's system. Further, as we noted in *Northern Natural*, Texas Gas requires shippers to resolve imbalances in the 0 to 3 percent range on an in-kind basis, instead of using its high/low pricing mechanism for such imbalances. However, Texas Gas uses that approach not as a means of mitigating the effect of its high/low proposal but because it believed that even the high/low pricing mechanism could be insufficient to prevent gaming in the 0 to 3 percent range. Accordingly, it proposed, and the Commission accepted, mandatory in-kind resolution of imbalances in the 0 to 2 percent range as a more effective means of mitigating arbitrage on its system.[24]

32. Finally, ExxonMobil argues that *Northern Natural* was the primary exception. However, it points out that Northern Natural and its shippers have subsequently settled the imbalance issue providing for continuation of high/low cashout pricing with a

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[20] *See* ExxonMobil Rehearing at 13 (*citing Transcontinental Gas Pipe Line Corp.*, 91 FERC ¶ 61,004 at 61,020, *reh'g denied*, 91 FERC ¶ 61,282 (2002)).

[21] *Transcontinental Gas Pipe Line Corp.*, 95 FERC ¶ 61,352 (2001) at 62,313-14, *reh'g*, 98 FERC ¶ 61, 213 (2002).

[22] *See* section 37 of Transco's cashout provisions.

[23] *Texas Gas Transmission Corp.*, 97 FERC ¶ 61,349 (2001).

[24] *Northern Natural Gas Co.*, 107 FERC ¶ 61,252 (2004) (*citing Texas Gas*, 97 FERC ¶ 61,349 at pp. 62,633-5).

guaranteed in-kind make-up option for a designated level of imbalances as a partial mitigation to the punitive effects of high/low cashout pricing. Thus, ExxonMobil argues that, to the extent the Commission is relying on the *Northern Natural* orders, the cashout mechanism on that pipeline will be changed, providing shippers with a reasonable amount of flexibility, assuming the settlement is approved. Any subsequent settlement in the *Northern Natural* case does not change the precedential value of the Commission's earlier merits holding that Northern Natural's high/low proposal was just and reasonable.

B. PTR Shippers

33. In this proceeding, the Commission was concerned that ANR's cashout mechanism did not give PTR shippers an adequate opportunity to resolve their imbalances. As we explained in the November 3 Order, PTR shippers (typically producers) are shippers who contract with processing plants to remove liquefiable hydrocarbons from the gas they have transported on ANR's system. Processing the gas to remove liquefiables can serve two purposes: (1) rendering the quality of the gas merchantable so that it may be transported safely through the pipeline; and (2) allowing the resulting liquids to be sold. There are four processing plants in the Southeast production area on ANR's system.[25] ANR has a contract with each of these plants that governs the processing of gas that has been committed to the plant by ANR's shippers.[26]

34. Although the processing plants are located on ANR's system, they are not owned by ANR. ANR transports the PTR shippers' gas to the processing plants, where the liquefiables are removed and the gas is then reinjected into ANR's pipeline for transportation to its ultimate destination. When liquefiables are extracted from the gas stream, the heating content of the gas is reduced (*i.e.*, plant thermal reduction). This "plant shrinkage" must be made up by the shipper through nominating additional gas to ANR. Therefore, ANR requires that, whenever gas is processed, each PTR shipper must enter into a separate liquefiables transportation agreement under Rate Schedule ITS, which requires the shipper to nominate additional make-up gas to replace the shrinkage that took place at the processing plant. The PTR shipper makes these nominations of PTR make-up based upon its production times the estimated shrink (plant thermal loss) at the plant.[27]

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[25] Tr. 224.

[26] Exhibit ANR-30. On rehearing, Indicated Shippers argue that ANR has the contractual right to receive information from the plant operators that the shippers do not have. Indicated Shippers Rehearing at 15.

[27] ANR explains that, if the gas stream at the shipper's receipt point is 100 Dth and a shipper estimates that the thermal content of the liquefiables (*e.g.*, plant condensate, PTR and flash gas) removed would be 8 Dth, the shipper would nominate an additional 8

(continued…)

35. However, the plant operator may not provide final figures for the plant thermal loss until 45 days or more after the end of the month in which the processing took place. As a result, a PTR shipper may not know the exact amount of any imbalance it incurred during a particular month until the middle of the second month after the imbalance took place or later. The Commission was concerned that this makes it difficult for PTR shippers to resolve their imbalances. Specifically, we were concerned that it could be difficult for PTR shippers to net and trade imbalances, since ANR's tariff generally required such netting and trading to take place in the month immediately following the month in which the imbalances occurred, before the PTR shipper would finally know the amount, if any, of its imbalance.

36. In the initial decision, the ALJ required that ANR assume primary responsibility for providing processing plant data concerning shrinkage to PTR shippers and ensure the data's accuracy, although finding that both Indicated Shippers and ANR have contracts with the plant operators.[28] However, in the November 3 Order, the Commission did not adopt the ALJ's decision requiring ANR to have primary responsibility for providing estimated shipper-by-shipper plant shrinkage information to PTR shippers. The Commission found that the Indicated Shippers had not satisfied their burden under NGA section 5 to show that ANR's failure to act as an intermediary between the plant operators and the PTR shippers for the purpose of providing this information is unjust and unreasonable or to show that requiring ANR to provide this information is just and reasonable. We stated that our primary concern about the timing of data to PTR shippers was to ensure that PTR shippers, like other shippers, would have an opportunity to net and trade imbalances in order to avoid penalties. We determined that the revised tariff sheets approved in Docket No. RP01-612-000[29] provide PTR shippers with sufficient time to net and trade imbalances because PTR shippers would be given a further opportunity to net and trade after the PTR shippers are informed of any changes in their plant shrinkage percentages for prior months.

Dth to make up for that PTR shrinkage. The estimate that the shipper would use to calculate the 8 Dth would be based on a shrinkage percentage (*i.e.*, 8%) provided by the plant operator. *See* Tr. 231.

[28] Despite the fact that several of the PTR shippers stated they do a fairly accurate job of keeping account of their plant shrinkage percentage, the ALJ found that ANR's contract had better terms than the PTR shippers' contract, thus giving ANR better access to the information needed to make the most accurate PTR nominations. He therefore concluded that ANR must play a larger role in keeping PTR shippers apprised of their status with respect to imbalances because ANR is in a better position to provide PTR shrinkage percentages to PTR shippers.

[29] *ANR Pipeline Co.*, 101 FERC ¶ 61,375 (2002).

37. The Commission recognized that the PTR shippers have an interest in obtaining on a real time basis as accurate as possible information concerning their individual plant shrinkage percentages because such information permits them to adjust their nominations to avoid a net imbalance for the month, thereby minimizing any need to net and trade thereafter. However, we stated that the relevant information is possessed, in the first instance, by the third party processing plants, not ANR. Thus, we stated the issue is whether the PTR shippers should obtain the information directly from the processing plant operators or should ANR be required to act as an intermediary between the two. We concluded that the PTR shippers should be responsible for obtaining the information directly from the plant operators.

38. First, we found that the Indicated Shippers had not made a sufficient showing of an inability to obtain the information directly from the plant operators to justify imposing this additional burden on ANR.[30] For example, ANR provided evidence that at least some of the Indicated Shippers currently receive from the plant operators estimated shrinkage percentages at the beginning of each month, as well as updated information concerning changes in operation that might occur during the month.[31] And, as the ALJ noted, the Indicated Shippers have the tools to monitor the shrinkage that their production undergoes in the processing plants since they are some of the largest energy firms in the world, and do not lack for resources.[32]

39. Unlike the ALJ, we did not believe that placing more of the information gathering and sharing burden on ANR would mean that more accurate information would become available to shippers on a more rapid timetable. We found that, based upon the record, this cannot be accomplished simply by giving ANR the primary responsibility of providing information to PTR shippers. As the record reflects, regardless of whether ANR or the PTR shippers get data from the plant operators during the month, the information that either of them will get will be estimates, as actual data will not be available until after the month in which the relevant imbalances were incurred, although PTR shippers can and do obtain updated information from the plant during the month to monitor their shrink percentage.[33] The ALJ stated that ANR had more favorable contract

[30] We find it inequitable to require ANR to perform calculations intended to instruct every PTR shipper on how to adjust its nominations at each of its receipt points in order to control its imbalances. In addition, we find it unjust and unreasonable that if ANR performed this service using estimated data that it obtained from the plant, and those estimates turned out to be different than actuals that ANR would be responsible for the shipper's imbalances and not the shipper.

[31] Ex. No. ANR-18 at 2-4 and Ex. No. ANR-19.

[32] 107 FERC ¶ 63,006 at P 56 (2004).

[33] *See* Ex. No. ANR-18 at 2-6 and Ex. No. ANR-19.

terms with plant operators than the PTR shippers. However, we concluded that PTR shippers have the ability to negotiate with the plant operators the same or more favorable terms in their contracts.

40. In light of ANR's proposed tariff changes in Docket No. RP01-612-000, which we accepted, we decided not to require ANR to be responsible for providing data to PTR shippers because this might cause more problems to arise. Since PTR shippers will have more time to trade after obtaining PTR data, the Commission found that the accepted modifications in this proceeding should be sufficient to address its concerns about PTR shippers. However, for the reasons discussed in the next section, the Commission finds that those changes may not have gone far enough.

1. <u>Should there be an In-Kind Option for PTR Shippers?</u>

41. On rehearing, the Indicated Shippers argue that ANR's high/low pricing cashout proposal does not remedy the inequitable treatment of PTR shippers, which they argue was one of the primary reasons why the Commission found ANR's previous cashout mechanism to be unjust and unreasonable.[34] Indicated Shippers argue that ANR's proposed cashout mechanism does not address PTR shippers' primary problem -- an inability to resolve imbalances and avoid penalties. They state that high/low pricing cannot influence the PTR shippers' behavior or reduce the level of imbalances for PTR shippers since PTR shippers cannot determine actual volumes of gas transported after the gas is processed. In their opinion, ANR's proposal amounts to little more than substituting a surcharge mechanism with a high/low cashout pricing mechanism which will operate as a penalty on PTR shippers since they will not be able to avoid the payment of such penalties.

42. Indicated Shippers contend that, as ANR's tariff is now structured, PTR shippers will be automatically penalized each month by a high/low pricing mechanism that they will not be able to avoid. They argue that, by implementing only a high/low pricing cashout mechanism, ANR will continue to treat PTR shippers in a discriminatory manner, by imposing penalties on innocent and unavoidable behavior. While ANR's cashout proposal may address swings in the cashout surcharge, they contend it does not address PTR shippers' inability to resolve their imbalances until months after the gas flow when actual plant shrinkage volumes are calculated by the plant operator, nor does it offer any explanation as to why a high/low pricing penalty on PTR shippers should be viewed as less unduly discriminatory than the cashout surcharge.

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[34] Indicated Shippers Rehearing at 3 (*citing* Ex. Nos. IND-1 at 10-18 and IND-24 at 8-16).

43. Indicated Shippers argue that, as proposed by ANR, its cashout proposal would simply substitute one type of penalty for another type of penalty. They contend that forcing PTR shippers to automatically pay a "high" price on PTR imbalances owed to ANR or automatically receive a "low" price on PTR imbalances owed by ANR is an impermissible penalty which is itself contrary to Commission policy. They state that no other pipelines have this type of problem with PTR shippers and there is no reason why ANR should not be required to implement procedures that the rest of the industry has been able to adopt. They argue that, if ANR wants to implement a high/low cashout mechanism generally, then it needs to take steps to prevent such from operating as a penalty as applied to PTR shippers. For example, they explain that, if high/low cashout pricing were offered in conjunction with an in-kind balancing option, ANR's cashout mechanism could provide all shippers, including PTR shippers, an opportunity to resolve their imbalances and avoid penalties, but it does not. Indicated Shippers therefore conclude that ANR's cashout mechanism adopted by the Commission is unjust and discriminatory.

44. Indicated Shippers contend that ANR's cashout proposal is improper because it imposes penalties when there is no operational harm and that it does not provide a mechanism for PTR shippers to avoid imbalance penalties. Indicated Shippers point to a few other pipelines and their tariffs to support their argument that using a high/low index pricing mechanism to resolve PTR imbalances is inappropriate where the shipper is not provided with the requisite data to avoid imbalance charges.[35] The Indicated Shippers state that, while other pipelines may not have been required to implement in-kind balancing, these other pipelines generally allow PTR shippers an opportunity to make up or cashout PTR imbalances using an average monthly index price.[36]

45. As the Indicated Shippers state, when we set the issue of the lawfulness of ANR's cashout mechanism for hearing, we stated that "the parties appear to agree that the current mechanism does not give PTR shippers an adequate opportunity to resolve their imbalances."[37] We also stated that "a well-functioning cash out mechanism should be capable of giving all shippers behaving responsible a fair opportunity to avoid penalty payments." The essential problem faced by the PTR shippers is that they must make up any "plant shrinkage" that occurs at the plant by nominating additional gas as a result of their separate liquefiables transportation agreements. The PTR shipper makes these

[35] *See* Indicated Shippers Rehearing at 9-12.

[36] However, as ANR stated in its Reply Brief, (1) there is absolutely no evidence in the record as to what other pipelines do or do not do with respect to PTR and (2) Indicated Shippers do not explain why treating PTR separately is not appropriate. *See* ANR Reply Brief at 8-9, note 4.

[37] 101 FERC ¶ 61,123 at P 18 (2002).

nominations based upon an estimate it is given of the percentage of gas delivered to the plant that will be lost through shrinkage. However, the plant operator may not provide final figures for the plant thermal loss until 45 days or more after the end of the month in which the processing took place. As a result, a PTR shipper may not know the exact amount of any imbalance it incurred during a particular month until the middle of the second month after the imbalance took place or later. Any such prior period adjustment then puts the PTR shipper out of balance.

46. In the November 3 Order, the Commission found that this problem had been resolved by ANR's revision to section 15.6(i) of its GT&C in Docket No. RP01-612-000.[38] Revised section 15.6(i) allows shippers to trade monthly transportation imbalance volumes within the same Operational Impact Areas not only for the currently ended service month, but also any prior period adjustment volumes for previous service months. Thus, PTR shippers may trade imbalances after learning of a change in their imbalance activity, even if the imbalance to which the related adjustment occurred more than one month before the adjustment.

47. After further considering this issue on rehearing, the Commission finds that ANR's tariff change giving PTR shippers an opportunity to net and trade imbalances arising from past period adjustments may not have gone far enough to address the problems faced by PTR shippers who incur imbalances as a result of prior period adjustments. PTR shippers should have the same ability to resolve this type of imbalance without having to cash them out, as ANR's shippers have with respect to all other imbalances. As discussed in response to ExxonMobil's request for rehearing, since ANR only requires net monthly imbalances to be cashed out, shippers need not cash out imbalances incurred during the course of a month, so long as they bring themselves into balance by the end of the month. Thus, if a shipper is out of balance on a net basis toward the end of the month, the shipper may correct that net imbalance by incurring offsetting imbalances at the end of the month. This, in essence, gives shippers a window within which to make up their imbalances on an in-kind basis before they are subject to cashout. Therefore, the Commission finds that PTR shippers should be offered a similar opportunity to resolve imbalances which arise as a result of prior period adjustments on an in-kind basis during the month in which the PTR shippers receive the prior period adjustment. In short, any prior period adjustment a PTR shipper receives during a month should be treated in the same manner as any other daily imbalance that shippers incur with respect to gas actually flowing during that month.

48. The Commission therefore requires ANR to file, within 30 days of the date of this order, revised tariff provisions consistent with the discussion in the previous paragraph. With this change, PTR shippers will have two opportunities to resolve imbalances arising

[38] 101 FERC ¶ 61,375 (2002).

from prior period adjustments before being required to cash them out pursuant to ANR's high/low weekly index price. First, they will be able to resolve the imbalance on an in-kind basis by incurring an offsetting imbalance during the remainder of the month in which it is informed of the prior period adjustment. Second, they will have an opportunity to net or trade that imbalance.

49. Indicated Shippers contend that netting and trading does not help much because most imbalances in a month are caused by unanticipated fluctuations in demand that cause imbalances to be in the same direction. First, Indicated Shippers do not cite to any evidence in the record to show that this is true. Second, there is no reason why prior period adjustments from varying processing plants, which are the PTR shippers' problem, should be in the same direction with one another or with the imbalances of other shippers. Finally, to the extent Indicated Shippers' contentions on rehearing relate to the reasonableness of ANR's proposed modifications to its cashout mechanism when applied to non-PTR shippers, those contentions have been addressed in our response to ExxonMobil's rehearing request.

2. <u>Who should be Responsible for PTR Shipper Information?</u>

50. Indicated Shippers argue that the Commission erred in not requiring ANR to play a larger role in keeping PTR shippers informed regarding imbalances. Indicated Shippers state that, although the Commission explicitly ordered ANR to take into account the timing of PTR shipper data, neither ANR's cashout mechanism nor the Commission's November 3 Order take into account the timing of data to PTR shippers. Indicated Shippers continue to believe that ANR should be responsible for providing the PTR data to shippers, or, alternatively, that PTR shippers should not be penalized.

51. Indicated Shippers contend that it is ironic that the Commission has approved a high/low pricing mechanism at least in part to reduce imbalances on ANR's system, while at the same time not providing the necessary tools for PTR shippers to reduce their imbalances. To meet the Commission's objectives of fewer imbalances on ANR's system, they continue to argue that ANR should be required to provide up-to-date information on individual plant shrinkage for each PTR shipper. Indicated Shippers assert that the Commission's decision not to require ANR to provide PTR information to PTR shippers conflicts with the Commission's reasoning in approving a penalty for imbalances within the 0 to 5 percent tolerance range. Indicated Shippers state that the penalty was approved to influence shipper behavior (*i.e.*, to avoid imbalances within this tolerance range) and thus reduce arbitrage. However, according to them, the Commission then recognized that the PTR shippers only have enough information to keep their imbalances within the 0 to 5 percent tolerance range. Indicated Shippers conclude that the Commission essentially approved a penalty that cannot be avoided by PTR shippers.

52. Indicated Shippers argue that the record in this case demonstrates that "ANR has contracts with all the plant operators on its system and all of these contracts require the plant operator [to provide ANR with] the necessary information on PTR transportation volumes."[39] They believe that because ANR does not argue that it cannot calculate PTR volumes based on this information that ANR can and has, in fact, traditionally determined PTR volumes and imbalances.[40] Indicated Shippers maintain that ANR is in the best position to keep track of PTR percentages and allocations back to individual receipt points[41] because PTR shippers do not have the contractual right to receive this same information from plant operators. They therefore conclude that the Commission's underlying rationale for not requiring ANR to provide PTR data to shippers for purposes of nominating PTR volumes from which to determine penalties is contrary to reasoned decision-making, particularly where ANR has traditionally provided this information. According to Indicated Shippers, the question should be why the Commission would permit a change in ANR's historic practices not whether PTR shippers bear a section 5 burden. The Indicated Shippers respectfully request that the Commission revisit the record and reverse its decision.

53. The Commission will not reverse its decision because Indicated Shippers have not met their burden under NGA section 5 of showing that ANR should be required to bear primary responsibility of providing this information. We reiterate that, as the ALJ stated in his initial decision, "[c]learly, the Indicated Shippers we encounter in this proceeding have the tools to monitor the shrinkage that their production undergoes in the processing plants. They are some of the largest energy firms in the world, and they do not lack for resources." Since Indicated Shippers are the ones contracting with the processing plants to have their gas processed, it makes sense for them to be the ones who deal with the processing plant and get information on plant shrinkage. We note that the revised tariff language accepted in Docket No. RP01-612-000 provides that if shipper cannot get information from the plant operator, it can then ask ANR for the information.[42] Further, we believe that the additional right to do in-kind make-up when information concerning a prior period adjustment is received reduces the need to have completely accurate information during the month of gas flow, since if the information received during that month is not accurate and a PTR shipper later receives a prior period adjustment, the PTR

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[39] Indicated Shippers Rehearing at 14-15 (*citing* Ex. Nos. IND-30, IND-31 and Tr. 235-248).

[40] Indicated Shippers Rehearing at 15 (*citing* Ex. Nos. ANR-18 at 2-3, IND-24 at 10 and ANR-21 at 1).

[41] Indicated Shippers Rehearing at 15 (*citing* Ex. No. IND-29 and Tr. 367). *See also* Indicated Shippers Rehearing at 16-17.

[42] 101 FERC ¶ 61,375 at P 11.

shipper will have the same means of curing the resulting imbalance as it would have had if it received accurate information during the month of gas flow.

C. FSS Overrun Service/Excess Fuel/LAUF Refund/Credit Revenues

54. Indicated Shippers argue that the Commission erred in not approving the Indicated Shippers' proposals related to FSS overrun service and excess fuel and LAUF gas refund/credit revenues. Indicated Shippers state that the Commission simply affirmed the ALJ's rejection of the Indicated Shippers' proposal without any substantive discussion.[43] Indicated Shippers assert that this is particularly surprising in view of the fact that the Commission in another ANR proceeding recently recognized that a true-up mechanism was required of ANR to prevent the continued overcollection of fuel and LAUF volumes.[44]

55. Indicated Shippers argue that the Commission has a duty to engage in reasoned decisionmaking by analyzing all the evidence before it. They argue that the Commission did not conduct its own analysis of the arguments or data presented regarding the Indicated Shippers' proposals but rather, in a conclusory fashion, the Commission affirmed the ALJ's rejection of the proposals for the reasons set forth in the initial decision. Indicated Shippers argue that neither the Commission nor the ALJ considered ANR's own responsibility for as-yet unrecovered cashout costs or volumes under its cashout mechanism. They assert that neither the Commission nor the ALJ weighed or

[43] Indicated Shippers believe they submitted some of the most enlightening evidence as to the manner in which ANR has utilized its imbalance cashout mechanisms and the facilities and services reserved for system operations to obtain tens of millions of additional revenues (that ANR now claims to be nonjurisdictional). Indicated Shippers Rehearing at 17.

[44] Indicated Shippers Rehearing at 17 (*citing ANR Pipeline Co.*, 108 FERC ¶ 61,050 (2004)). Indicated Shippers state that in that proceeding it showed that between 1996 and 2002 ANR overcollected its fuel and LAUF by approximately 32.5 Bcf or more than $100 million. Indicated Shippers believe that the tie between that proceeding and this proceeding is (i) in this proceeding, evidence was submitted that ANR had recovered approximately $20 million during the same time period that certain additional cashout accruals were being made, (ii) ANR utilized firm system storage and transportation facilities and services reserved in part for imbalance services to make sales in its own name during the winter heating season, (iii) ANR's only tariff authority to make jurisdictional sales is under its cashout mechanism, and (iv) since this proceeding was explaining how ANR could pass on additional costs under a cashout mechanism, it is fully appropriate to examine at the same time whether pipeline sales revenue under the cashout mechanism should be offset against the additional costs. *Id.* at 17-18.

even considered what the offsetting revenues might have been collected by ANR under its tariff provisions. Indicated Shippers further assert that it appears that sales of excess fuel have been done by ANR in a manner that is inconsistent with Commission rules and has been harmful to cashout shippers. Indicated Shippers argue that the Commission did not rule on the merits of their proposals, although the evidentiary record is sufficiently developed on these issues. Because of its belief that the Commission's rejection of the Indicated Shippers' proposals lacks a rational basis and contains virtually no discussion, they argue that the Commission's decision is arbitrary and capricious. Because Indicated Shippers believe the November 3 Order fails to provide any justification, Indicated Shippers want the Commission to grant rehearing and reverse its decision regarding the refund/credit revenues.

56. We find the ALJ adequately analyzed and decided the refund/credit revenue issues raised by the Indicated Shippers in the hearing, which we affirmed. Indicated Shippers provide no new arguments or legal reasons in its briefs on and opposing exceptions or on rehearing to support reversing the ALJ or our own decision. Further, we will not reverse our decision on these issues because they go beyond the scope of the issues set for hearing in this proceeding. These issues, as Indicated Shippers allude to, are being addressed in the Docket No. RP04-201-000 proceedings in which the Commission recently recognized that a true-up mechanism is needed to prevent the overcollection of fuel and LAUF volumes.

II. Discussion of Compliance Filing

57. On December 3, 2004, ANR filed tariff sheets to comply with the November 3 Order.[45] With respect to the requirements to (1) switch its pricing mechanism for cashing out imbalances to a weekly high/low pricing mechanism and (2) eliminate the current 10% carry forward provision, ANR included in substance the same provisions that were submitted as an exhibit in the hearing. With respect to the other required modification, ANR states that it has changed its practice on when to purchase or sell replacement gas from an operational basis to a practice of purchasing and selling gas to balance the

[45] The November 3 Order required ANR to: (1) modify its current cashout mechanism by switching its pricing mechanism for cashing out imbalances from an average weekly index price to a weekly high/low pricing mechanism, (2) eliminate the current 10% carry forward provision, and (3) revise its tariff to reflect the change in its former practice in which operational considerations were the primary driver for determining when to purchase or sell replacement gas in order to reflect its proposed practice of purchasing or selling gas to balance the system in the month following the creation of the imbalance, to the extent such purchases or sales are operationally practicable.

system in the month following the creation of the imbalance to the extent operationally practicable. ANR states that its intent is to establish a practice of purchasing or selling replacement gas on a monthly basis as directed by the November 3 Order.

58. The Commission finds that ANR has complied with the requirements of the November 3 Order. We accept the tariff sheets that switch ANR's pricing mechanism for cashing out imbalances from an average weekly index price to a weekly high/low pricing mechanism and that eliminate the current 10% carry forward provision. We also accept the revised tariff sheet that changes ANR's former practice concerning when to purchase or sell replacement gas to its proposal of purchasing or selling gas to balance its system in the month following the creation of the imbalance, to the extent such purchases or sales are operationally practicable.

59. Outside of the compliance obligation, ANR proposes to reduce its 2.4 Bcf gas imbalance resulting from the current mechanism by purchasing sufficient gas to gradually reduce this deficiency over a 36-month period. ANR states that its strategy to spread these purchases over a three-year period is designed to mitigate the impact of an immediate purchase of the entire existing gas deficiency. ANR explains that it intends to implement this strategy as part of the modified tariff mechanism that has been approved. However, ANR did not submit additional tariff language to implement this purchasing strategy. ANR states that it contemplates that purchases to reduce the past deficiency will be reviewed when ANR makes its annual reconciliation filings pursuant to its tariff.

60. BP filed a protest and ExxonMobil filed comments to ANR's proposal, both of which address ANR's buydown proposal to reduce its historical imbalances. In addition, BP wants the Commission to require ANR to adopt an on-line auction procedure. These matters are discussed below.

A. <u>Buydown Proposal</u>

61. In response to ANR's buy-down proposal to reduce its historical imbalances over a three-year period, BP states that to the extent the Commission approves this proposal, the Commission should require ANR to include tariff language setting out ANR's strategy. ExxonMobil states in its comments concerning ANR's buy-down proposal of its imbalances that the impact of the proposal is unclear since the dollars are unknown at this point in time. ExxonMobil requests the Commission clarify that any ruling on the filing would not prejudge the justness and reasonableness of ANR's buy-down proposal or prejudice the rights of any party to take whatever position that may be appropriate when ANR makes its annual reconciliation filing.

62. Although ANR's buydown proposal to reduce its 2.4 Bcf imbalance by purchasing sufficient gas to gradually reduce this deficiency over a 36-month period goes beyond the scope of our compliance requirements, the Commission will accept the proposal subject

to ANR submitting tariff language within 30 days of this order for review and comment. This acceptance does not limit any party from taking a position on the appropriateness of ANR's annual reconciliation filing.

B. On-Line Auction Procedure

63. In its protest, BP urges the Commission to require ANR to adopt an on-line auction procedure for purposes of purchasing or selling gas needed for operational purposes. BP states that a competitive bidding auction would ensure that ANR receives the best possible terms for operational purchases and sales. BP explains that the auction approach is already used by a number of other pipelines in making operational/sales, and it appears to be becoming the industry norm for accomplishing purchases and sales for operational purposes. BP argues that an auction process appears to be especially important in connection with the requirement approved by the Commission in the November 3 Order that ANR automatically buy or sell gas in the month following the creation of an imbalance. BP further argues that requiring ANR to post its purchase/sale volumes for competitive bidding will also permit ANR to use its considerable operational flexibility to good advantage. For instance, BP asserts that ANR may be able to have gas delivered in the market area from Canada or in the production area to optimize receipt of supply on its system and reduce its purchase costs.

64. In its Answer, ANR responds that parties have challenged the prudence of ANR's purchases and sales and there is no evidence on the record in this proceeding that suggests that ANR has favored any affiliates. ANR also states that it currently posts for bidding volumes that it wishes to buy or sell for balancing purposes. It states that bids are awarded based on price, taking into consideration any operational constraints relating to delivery. ANR intends to continue to either post these purchases and sales for bidding on its electronic bulletin board or utilize an electronic on-line platform such as the Intercontinental Exchange.

65. The Commission will not require ANR to adopt an on-line auction procedure for purposes of purchasing or selling gas needed for operational purposes as BP requests. We find that the procedures ANR describes will ensure that ANR's purchases and sales will be made in a transparent, competitive manner and consistent with the operational requirements of its system. In any event, when ANR files to recover any costs related to its purchases or sales of gas for operational reasons, its customers are free to raise the issue whether ANR's incurrence of those costs was prudent.

The Commission orders:

(A) The requests for rehearing are denied in part and granted in part, as discussed above.

(B) ANR is directed to file revised tariff provisions within 30 days consistent with the above discussion concerning the problems faced by PTR shippers who incur imbalances as a result of prior period adjustments.

(C) The tariff sheets listed in footnote 10 are accepted for filing to be effective January 1, 2005, as proposed.

(D) ANR's buydown proposal is approved, subject to ANR submitting tariff language within 30 days of this order for further review and comment.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.