

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. RP04-201-004 and  
RP04-201-005

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued May 31, 2005)

1. On January 26, 2005,<sup>1</sup> the Commission denied rehearing of its July 13, 2004 decision<sup>2</sup> requiring ANR Pipeline Company (ANR) to implement a fuel tracker with a true-up provision. The Commission reaffirmed its holding that ANR's tariff provisions concerning recovery of fuel use and lost and unaccounted for (L&U) gas are unjust and unreasonable, because they permit ANR to make changes in its fuel use and L&U percentages outside of a general section 4 rate case, but do not require any true up of under and over recoveries. Consequently, the Commission directed ANR to file revised tariff sheets implementing the true-up provision.
2. On February 10, 2005, ANR submitted revised tariff sheets to comply with the January 2005 Order.<sup>3</sup> On February 25, 2005, the East Ohio Gas Company d/b/a Dominion East Ohio (Dominion) and Indicated Shippers filed requests for rehearing.<sup>4</sup> ANR filed a request for clarification, or in the alternative, rehearing. For the reasons discussed below, the Commission will accept, subject to condition, the tariff sheets ANR filed to implement the fuel tracker with a true-up provision. The Commission denies in part and grants in part the requests for rehearing. The Commission also grants ANR's requested clarifications. This decision benefits the public because it requires the pipeline

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<sup>1</sup> *ANR Pipeline Co.*, 110 FERC ¶ 61,069 (2005) (January 2005 Order).

<sup>2</sup> *ANR Pipeline Co.*, 108 FERC ¶ 61,050 (2004) (July 2004 Order).

<sup>3</sup> Eighteenth Revised Sheet No. 2, Sixth Revised Sheet No. 92, Fourth Revised Sheet No. 195, Second Revised Sheet No. 196 and Second Revised Sheet No. 197 to FERC Gas Tariff, Second Revised Volume No. 1.

<sup>4</sup> On March 3, 2005, the Wisconsin Distributor Group (WDG) filed comments in support of Dominion's request for rehearing. Since the Commission's rules prohibit answers to rehearing requests (18 C.F.R. section 385.713(d)(1)), the Commission rejects WDG's March 3 filing.

to track and true-up its actual fuel use and L&U gas 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) of its FERC Gas Tariff 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 currently effective 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 Commission approved ANR's current fuel recovery mechanism in 1997.<sup>5</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 over recovering its fuel use. However, the Commission stated that "should the information consistently indicate that ANR is over collecting fuel, the Commission can reassess the need for changes to the fuel provisions, including a true-up mechanism, at that time."<sup>6</sup> On January 30, 2002, 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>7</sup>

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<sup>5</sup> *ANR Pipeline Company*, 78 FERC ¶ 61,290 (1997).

<sup>6</sup> *Id.* at 62,267.

<sup>7</sup> *See ANR Pipeline Company*, 98 FERC ¶ 61,053 at 61,138 (2002).

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.<sup>8</sup> 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. On April 14, 2004, ANR submitted further information in response to the questions raised by the Commission in the March 30 Order.

6. In its July 2004 Order on the compliance filing, the Commission held that the lack of a true-up mechanism for ANR's fuel tracker was unjust and unreasonable. Taking section 5 action, 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 file *pro forma* tariff sheets establishing a true-up mechanism for review to determine if it conforms to Commission policy.<sup>9</sup> ANR and WDG requested rehearing of the July 2004 Order contending, among other things, that ANR's existing fuel recovery mechanism benefits ANR's customers by giving ANR an incentive to reduce its fuel use. In light of the contentions of ANR and WDG and the new evidence in the charts and graphs attached to their rehearing requests, on October 8, 2004, the Commission issued an interim order inviting other parties to file comments on the claims made by ANR and WDG.<sup>10</sup> Comments were filed supporting and opposing the requests for rehearing filed by ANR and WDG.<sup>11</sup> On October 12, 2004, ANR submitted *pro forma* tariff sheets in compliance with the Commission's directives to implement a fuel tracker with a true-up mechanism, which were protested.

7. In the January 2005 Order, the Commission denied ANR's and WDG's requests for rehearing and reaffirmed its holding that ANR's existing tariff provisions are unjust and unreasonable, since they permit ANR to make changes in its fuel and L&U gas outside of a general section 4 rate case but do not require any true-up of over and under recoveries.

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<sup>8</sup> *ANR Pipeline Co.*, 106 FERC ¶ 61,328 (2004) (March 30 Order)

<sup>9</sup> July 2004 Order at P 18.

<sup>10</sup> *ANR Pipeline Company*, 109 FERC ¶ 61,038 (2004) (October 8 Order).

<sup>11</sup> Consumers Energy Company (Consumers), Dominion, Michigan Consolidated Gas Company (MichCon), Proliance Energy, LLC (Proliance) and SEMCO Energy Gas Company (SEMCO) filed supporting comments and 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 opposing comments.

The Commission also generally approved ANR's proposed changes to its tariff to include a true-up mechanism, but directed ANR to change a few of its proposed tariff provisions and to provide further explanations of certain other proposals. The Commission directed ANR to file actual tariff sheets implementing a true-up provision and the required explanations within 15 days. On February 10, 2005, ANR submitted its filing to comply with these directives. In addition, Dominion and the Indicated Shippers requested rehearing of the January 2005 Order and ANR requested clarification or rehearing.<sup>12</sup>

## **II. Requests for Rehearing/Clarification**

8. For the reasons discussed below, the Commission grants Dominion's request for rehearing, denies Indicated Shippers' request for rehearing, and grants ANR's requests for clarification.

### **A. Finding that ANR's Tariff is Unjust and Unreasonable**

9. In the January 2005 Order, before addressing the parties' specific contentions, the Commission first modified 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. The January 2005 Order contains a detailed discussion of the reasons for the Commission's change in policy.<sup>13</sup> The Commission then turned to the specific contentions of the parties on rehearing. One of those contentions was that the existing mechanism had benefited ANR's customers by giving ANR an incentive to reduce its fuel use. The Commission rejected this contention. The Commission stated that it found nothing in the current record to clearly tie any reductions in fuel use to the existing fuel tariff mechanism. The Commission further stated that, 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. ANR's fuel use mechanism does not comply with various requirements of the incentive ratemaking policy. Finally, the Commission stated that the customers supporting ANR's current mechanism are regulated local distribution companies (LDCs) with market power and those opposing the current mechanism are producers and marketers who lack market power. The Commission accordingly stated that it placed more weight on the comments of the producers and marketers.<sup>14</sup>

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<sup>12</sup> On March 22, 2005, the American Gas Association (AGA) filed a motion to intervene out-of-time which included a request for clarification concerning the Commission's rationale in Paragraph 40 of the January 2005 Order. At this late stage of this proceeding, the Commission denies AGA's request to intervene.

<sup>13</sup> January 2005 Order at P18-28.

<sup>14</sup> *Id.* at P 40.

10. On rehearing, Dominion states that it does not seek a change in the result of the January 2005 Order. Dominion requests only that the Commission withdraw its finding that greater weight should be placed on the comments of the producers and marketers, than the comments of the LDCs, due to the relative lack of market power of the producers and marketers. Among other things, Dominion contends that the Commission's statements concerning the relative market power of the LDCs versus the marketers and producers were unsupported factual findings.

11. The Commission grants rehearing on this issue. Our holding that ANR's existing fuel recovery mechanism is unjust and unreasonable because it lacks a true-up mechanism was fully supported by the other reasoning in the January 2005 Order. The discussion concerning the relative market power of the various commenters was unnecessary to the order, and, upon further consideration, the Commission no longer relies on any finding about the market power of the different commenters to support the result reached in the January 2005 Order.

### **B. Transactional Throughput**

12. Since 1998, ANR's tariff has provided for it to use transactional throughput in calculating its fuel use and L&U percentages. Transactional throughput includes all volumes ANR delivers pursuant to its contracts with its shippers, including deliveries by displacement, exchange and backhaul activity. In our July 2004 Order, we did not require ANR to change this aspect of its tariff. The section 5 action taken in that order was limited to directing ANR to modify its tariff to include a mechanism to true-up over- and under recoveries of fuel use and L&U gas. ANR's filing to comply with the July 2004 Order did not modify its tariff provisions providing for the use of transactional throughput in calculating the fuel use and L&U percentages. Indicated Shippers did not seek rehearing of the July 2004 Order. However, it did protest ANR's compliance filing, arguing that ANR should be required to use actual metered throughput<sup>15</sup> in calculating the fuel use and L&U percentages, rather than transactional throughput.

13. In the January 2005 Order, the Commission denied Indicated Shippers' protest to ANR's compliance filing. The Commission stated that the July 2004 Order had not required ANR to change its existing tariff provisions concerning the volumes to be used in calculating ANR's fuel use and L&U percentages. The Commission stated that, accordingly, ANR had complied with the July 2004 Order on this issue. The Commission stated that Indicated Shippers were asking the Commission to take section 5 action to modify ANR's tariff on this matter. The Commission recognized that the 2002 Settlement approved by the Commission which established ANR's latest fuel use methodology indicated that the transactional throughput methodology could be re-

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<sup>15</sup> Indicated Shippers refers to this as the gross meter volumes (GMV) method.

examined in ANR's fuel use filing submitted in 2004.<sup>16</sup> However, we rejected Indicated Shippers' request that we require ANR to use actual throughput as measured by ANR's meters since ANR did not propose such a change and Indicated Shippers failed to support its request that ANR discontinue using the transactional throughput methodology. The Commission concluded that transactional throughput includes volumes transported by displacement and backhaul which increases ANR's total throughput, thereby decreasing the fuel use and L&U percentages. We found that use of transactional throughput is consistent with previous Commission findings. Because Indicated Shippers failed to present any new information, the Commission declined to change its earlier findings.

14. On rehearing, Indicated Shippers request that the Commission require ANR to demonstrate that the continued use of transactional throughput is just and reasonable. Indicated Shippers argue the Commission erred by approving ANR's continued use of transactional throughput to determine fuel use and L&U percentages (with one exception). Indicated Shippers state that, while the Commission correctly held that there was an issue related to how transactional throughput associated with the CenterPoint Gas Transmission Company (CenterPoint) transportation agreement was determined that could not be resolved on the basis of the existing record, the Commission did not require ANR to provide information on other transactions where the physical flows varied from contract flows. Indicated Shippers argue that the Commission's failure to broaden the scope of the information that ANR is required to provide is contrary to reasoned decision-making.<sup>17</sup>

15. Indicated Shippers state that the Commission has never found the transactional throughput methodology to be just and reasonable except on an experimental basis. They argue that, in view of the experimental nature of the use of transactional throughput, the burden of demonstrating that its continued use is just and reasonable should be on the pipeline – not Indicated Shippers who have simply questioned whether the experiment should be continued. Indicated Shippers argue that, without first requiring ANR to provide information showing the impact of using transactional versus actual throughput, the Commission has improperly shifted the burden of proof.<sup>18</sup> Indicated Shippers request that the Commission order ANR to demonstrate the impact of designing fuel and L&U rates based on transactional versus actual throughput, which parties should comment upon so that the Commission will have record evidence upon which it can determine whether ANR should be allowed to continue using transactional throughput to design its fuel and L&F rates.<sup>19</sup>

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<sup>16</sup> *ANR Pipeline Co.*, 98 FERC ¶ 61,053 at 61,138 (2002).

<sup>17</sup> Indicated Shippers Rehearing at 2.

<sup>18</sup> Indicated Shippers Rehearing at 3.

<sup>19</sup> Indicated Shippers Rehearing at 3. Indicated Shippers argue that ANR should not be allowed to continue using the transactional throughput methodology to calculate

16. Indicated Shippers contend that the need for disclosing actual throughput data is heightened by the Commission's ordering ANR to adopt a fuel tracker and true-up mechanism. With the new fuel mechanism in place, Indicated Shippers argue now is the appropriate time to compare the use of actual throughput to the use of the transactional methodology. Indicated Shippers are concerned that the transactional throughput methodology may not consider the actual flow patterns on ANR's system and ANR's failure to consider this may result in zone fuel rates that are not reflective of actual throughput volumes.

17. The Commission finds that Indicated Shippers failed to raise this issue in a timely fashion in this proceeding and therefore we decline to conduct a review of the transactional throughput methodology at this late stage of this proceeding. Specifically, Indicated Shippers did not raise this issue in their protest to ANR's initial March 1, 2004 filing in this proceeding or in its comments on the April 14, 2004 compliance filing. In the July 2004 Order addressing the compliance filing, the Commission acted under NGA section 5 to direct ANR to develop a true-up mechanism but did not require ANR to use the actual throughput methodology as Indicated Shippers now request. Indicated Shippers did not seek rehearing of that decision. Rather, Indicated Shippers only raised the issue in its protest to ANR's filing to comply with the July 2004 Order. However, that issue was not appropriately raised in a protest to the compliance filing, since it went beyond the scope of whether ANR had in fact complied with the July 2004 Order. Thus, Indicated Shippers have failed to raise this issue in a timely fashion when offered the opportunity earlier in this proceeding, and the Commission declines now to reopen the record in order to further examine this issue at this time. Indicated Shippers may raise the issue of whether to use the actual throughput methodology in a future annual fuel and L&U gas filing. Further, as discussed below, Indicated Shippers should be able to compare actual throughput data provided in the Form No. 2 with the transactional data submitted in the annual fuel and L&U gas filing.

### **C. Crediting of Revenues**

18. In the January 2005 Order, the Commission accepted ANR's proposal 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 stated that it 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

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fuel and L&U rates without also being required to report actual throughput data, including backhauls, displacements and exchanges and to calculate fuel and L&U rates based on both actual and transactional throughput. It states this type of impact analysis is needed to properly evaluate how ANR's fuel and L&U rates should be determined. *Id.*

prior Commission rulings, the Commission accepted ANR's proposal but required ANR to revise its tariff to provide: (a) posting and bidding procedures for the purchase and sale of gas for operational purposes; (b) that 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) a specification in the tariff of the circumstances under which ANR would perform an operational purchases or sale; (e) that operational sales service must be unbundled from transportation service; and (f) for the 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 Commission required ANR to indicate in the report 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.

19. ANR seeks clarification, or in the alternative rehearing, of whether the Commission's condition requiring ANR to file an annual report (of sales and purchases and revenues derived from the sale of gas and the crediting of the revenues from such sales)<sup>20</sup> requires that all revenues associated with operational sales be credited to shippers, or only requires ANR to report the costs and revenues in the annual filing. ANR states that, in addition to tracking its fuel use and L&U gas pursuant to section 37 of its GT&C, ANR accounts for purchases and sales of gas used to balance its system as part of its cashout mechanism in section 15 of its GT&C. ANR states that, in addition to purchasing and selling imbalance and fuel gas pursuant to these sections of its tariff, it is also listing in its tariff, pursuant to requirement (d) in the previous paragraph, other circumstances in which it would purchase or sell gas for operational reasons, such as to maintain system pressure and line pack, perform other operational functions in connection with providing service and to otherwise protect the operational integrity of its system. ANR states that it does not currently have any mechanism in its tariff to recover the costs of such purchases.<sup>21</sup>

20. ANR does not oppose the reporting of all revenues derived from any such sales. However, ANR argues that there is no basis for a requirement that it credit any revenues to its shippers when there is no mechanism, nor does ANR propose to include a mechanism, in its tariff to recover corresponding costs. Therefore, ANR requests the Commission to find that, to the extent ANR absorbs the cost of operational purchases, ANR is not required to credit the revenues associated with operational sales. ANR argues that the Commission's prior orders on this issue are consistent with ANR's requested clarification. ANR argues that the filing of an annual report showing the

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<sup>20</sup> This report must indicate the source of the gas, date of purchase/sale volumes, purchase/sale price, costs and revenues from the purchase/sale, and the disposition of the costs and revenues.

<sup>21</sup> ANR Request for Clarification at 3.



disposition of revenues from sales of operational gas will enable ANR's shippers and the Commission to determine if ANR is attempting to retain revenues and at the same time recover associated costs. ANR states that a crediting requirement relating to sales of gas in situations where ANR has no opportunity to recover corresponding costs would be irrational and unlawful. Consequently, ANR requests the Commission to clarify that it is not imposing such a requirement.

21. The Commission grants ANR's requested clarification. By requiring ANR to file an annual report of sales and purchases and revenues derived from sales of gas and the crediting of the revenues from such sales, the Commission was not requiring ANR to credit to shippers the revenues associated with operational sales.

#### **D. Fuel Use Filing and Form No. 2 Data**

22. In the January 2005 Order, the Commission stated that it was requiring ANR to base its fuel use and L&U percentages on Form No. 2 data as adjusted from transactional throughput. The Commission also stated that, 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 in the fuel filing with the Form 2 data.

23. ANR seeks clarification, or in the alternative rehearing, of the Commission's finding that it use Form No. 2 data in its annual fuel filing. ANR explains that during the course of this proceeding a question arose about the data in ANR's fuel filing not matching the data reported in its Form No. 2 because ANR used different accounting periods for each one. ANR explained that there is a one-month lag in the data it reports in its Form No. 2 so that December's production data is not reported until January of the next year. In its annual fuel filing, ANR uses actual production data for the calendar year. ANR states that, due to this one-month lag, the data used in the fuel filing does not match the Form No. 2 data.<sup>22</sup>

24. ANR states that the Commission's assumption (that since ANR bases its fuel filing on a calendar year, which matches Form No. 2, the customers will have an opportunity to compare the data) is not correct. ANR explains that, although both filings use a 12-month calendar year, the Form No. 2 filing utilizes an accounting calendar year while the fuel filing uses a production calendar year. ANR seeks clarification that the Commission wants ANR to continue using a production calendar year in its fuel filing. ANR states that in compliance with the January 2005 Order, ANR will provide a reconciliation of the

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<sup>22</sup> ANR Clarification at 4.

production data used in its fuel filing with the data to be used in its Form No. 2 filing.<sup>23</sup> ANR submits that shippers will be able to compare the two sets of data and verify that the difference is due only to this one-month lag.

25. The Commission grants the requested clarification.

### **III. Compliance Filing**

26. In its February 10, 2005 Filing, ANR revised sections 37(d)(3) and (4) of its GT&C to eliminate references to the three-month estimates of deferred transporter's use. Also, in response to the Commission's requirement that ANR revise its provision for operational purchases and sales, ANR submits a new section 38 of its GT&C which: (1) specifies the circumstances under which ANR would perform an operational purchase or sale; (2) clarifies that operational sales will be unbundled from transportation and that any purchases or sales will have a lower transportation priority than firm service; (3) specifies the posting and bidding procedures that will apply to operational purchases and sales; and (4) requires the filing of an annual report specifying the information that the Commission requires. ANR states that the annual report will not duplicate the data that will be supplied in the annual cashout reconciliation filing that it makes under section 15 of its GT&C. ANR also proposes new language in section 1.68 of its GT&C to correct a problem with the mismatching of the allocation of fuel use associated with its transportation agreement with CenterPoint.

27. 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. Dominion filed comments supporting ANR's proposed clarification in section 1.68 and requests that the Commission accept the proposal. While not challenging the requirement that ANR implement a fuel tracker with a true-up provision, WDG protested certain elements of ANR's approach to complying with the Commission's order. Specifically, WDG protests the proposed one-year basis for calculating the fuel use percentage and L&U percentage and what it alleges are ambiguities in ANR's filing relating to (1) the effective dates for implementing the fuel tracker and (2) the contract for capacity on CenterPoint. On March 14, 2005, ANR filed an answer. 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,<sup>24</sup> the Commission will accept ANR's answer in this proceeding to allow a better understanding of the issues.

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<sup>23</sup> ANR Clarification at 5. ANR states that it makes the annual fuel filing on March 1, but does not make its annual Form No. 2 filing until April. ANR Clarification at note 3.

<sup>24</sup> 18 C.F.R. § 385.213(a)(2) (2004).

### **A. Averaging Method versus One-Year Method**

28. ANR's tariff, as in effect before this proceeding, required it to calculate its fuel use percentage based on dividing the average fuel use during the three previous years by throughput for the same three-year period and to calculate the L&U percentage by dividing average L&U over the last four years by throughput for the same four-year period. In its filing to comply with the July 2004 Order's requirement that it implement a true-up mechanism, ANR proposed to modify its tariff so as to only use the data for the most recent calendar year in calculating its fuel use and L&U percentages.

29. In the course of denying ANR and WDG's requests for rehearing of the July 2004 Order, the Commission made clear in its January 2005 Order that it had 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. Therefore, if ANR wished to retain the smoothing effect of using multi-year averages to determine its fuel retention percentages, it was free to do so. However, the Commission stated that, in its compliance filing proposing to remedy the lack of a true-up mechanism, ANR had determined that calculating the fuel use and L&U percentages based on the data for the most recent calendar year is preferable. The January 2005 Order denied WDG's protest of this proposal.

30. The Commission found that this aspect of ANR's compliance filing was just and reasonable, even though it might also be just and reasonable for ANR to continue using the three and four year average data. We explained that the use of the most recent calendar year data is likely to produce a more accurate projection of actual use during the next year, compared to using the three and four year averages. We found it reasonable to conclude that using the most recent calendar year data is more likely to minimize the need for substantial true-up surcharges. In addition, we stated that the Commission has historically approved fuel trackers with true-up mechanisms based on one year of data as just and reasonable. We found that WDG had 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.

31. WDG did not seek rehearing of the January 2005 Order. However, in its protest to ANR's filing to comply with the January 2005 Order, WDG again argues that ANR should calculate the fuel use and L&U percentages using the three and four year averaging technique currently set forth in ANR's tariff, instead of the one year basis. WDG states that it demonstrated that an averaging technique results in more stable and predictable fuel rates. WDG argues that, for the same reasons, any fuel tracker should also use a forward rolling three-year recovery period instead of a one-year period.<sup>25</sup>

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<sup>25</sup> WDG Protest at 2 and note 4 and 5.

WDG contends that, without explanation and despite the Commission's invitation for ANR to retain the use of multiple year averages as a smoothing technique, ANR ignored the evidence showing the benefits of a multiple year averaging technique and proposed a one-year basis to calculate the annual fuel use and L&U percentages. WDG contends that ANR's proposed single year approach will result in significant volatility on ANR's system, as shown by WDG's own study.<sup>26</sup> WDG argues that, in contrast, the multiple years of data will result in more stable rates with fewer spikes, benefiting not only ANR's customers, but ANR to the extent its system would be more attractive to customers who make their transportation contracting decisions based on the cost of fuel.

32. In the January 2005 Order, the Commission approved ANR's proposal in its filing to comply with the July 2004 Order to change from using a three and four year averaging methodology to its proposed method of using one year's worth of data. WDG did not seek rehearing of that decision. The purpose of the compliance filing is to fulfill the Commission's directives in the January 2005 Order. The January 2005 Order did not require ANR to reconsider its proposal to use only one year's worth of data. Rather the January 2005 Order expressly approved that proposal. We find that ANR has complied with our directives. The issue WDG seeks to raise goes beyond the scope of the compliance filing, and, accordingly, is rejected.

### **B. Dates for Implementing the Fuel Tracker**

33. In the January 2005 Order, the Commission required ANR to adopt tariff provisions establishing a true-up mechanism that "will become effective in ANR's March 1, 2006 Filing reflecting the surcharge of over and under collections of gas during the period April 1, 2005 through December 31, 2005." WDG states that the Commission added that "[s]ubsequent annual filings should account for over/under recoveries for the entire calendar year."<sup>27</sup> WDG contends that ANR's proposed tariff language makes no mention of the limited months that should be taken into account in its March 1, 2006 Filing. WDG states that, instead ANR proposed in section 37(d)(3) of its tariff that the annual transporter's use adjustment percentage shall be calculated by rate segment:

By dividing (1) the positive or negative balance in the applicable Deferred Transporter's Use subaccount as of December 31 of the previous calendar year and allocated to each rate segment based on the over/under recoveries that occurred in each rate segment during the previous calendar year, by (2) the sum of (1) above and the transactional throughput in each rate segment for the previous calendar year.

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<sup>26</sup> WDG Protest at 3 (*citing* Exhibit A attached to its pleading).

<sup>27</sup> WDG Protest at 8 (*citing* January 2005 Order at P 73).

34. WDG argues that, if this tariff language were to govern ANR's March 1, 2006 Filing, ANR would likely seek to file a surcharge reflecting over and under collections from December 31, 2004 until December 31, 2005, despite the Commission's direct order that ANR use a more limited initial period of April 1, 2005 through December 31, 2005. WDG requests that the Commission order ANR to amend its proposed tariff language accordingly.

35. The Commission will not require ANR to modify proposed section 37(d)(3) of its tariff for a one-time transitional situation since the proposed tariff modification is intended to apply to all of ANR's subsequent annual filings. Therefore, we will accept the tariff provision as proposed by ANR. However, the Commission agrees with WDG that the tariff language could be interpreted as permitting ANR to track over and under recoveries for the calendar year 2005. Consequently, the Commission clarifies that ANR may only reflect the initial period of April 1, 2005 through December 31, 2005, in its annual filing to be made in 2006, as contemplated by the Commission in the January 2005 Order.

### **C. Transportation on CenterPoint**

36. In its filing to comply with the July 2004 Order, ANR acknowledged that there was a problem with the assignment of transactional throughput associated with its transportation agreement with CenterPoint, another interstate pipeline. ANR stated that it uses its capacity on CenterPoint as a crossover between the Southwest and Southeast Mainline legs of its system. ANR explained that this crossover capability allows ANR to balance its system and provide enhanced operating flexibility and reliability.<sup>28</sup> ANR stated that currently the 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 mainline. To correct this mismatch, ANR proposed to assign the transactional throughput associated with ANR's use of the CenterPoint capacity to its Southeast mainline. In the January 2005 Order, the Commission stated that it was unclear from ANR's filing how the proposed solution will rectify the problem. We therefore required ANR to provide a detailed explanation of the proposed solution and submit tariff provisions that define the applicable terms for the transactional throughput associated with the transportation agreement with CenterPoint. Parties would then be able to review and comment upon the proposal.<sup>29</sup>

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<sup>28</sup> ANR stated that, historically, the physical flows under the CenterPoint contract have been primarily west to east based on economics and the nominations of ANR's shippers. February 10, 2005 Compliance Filing at 2-3.

<sup>29</sup> January 2005 Order at P 66.

37. In its compliance filing, ANR clarifies in section 1.68 of its GT&C the treatment of the CenterPoint throughput in the Transporter's Use calculations. ANR states that, as suggested by WDG, it clarifies that the Southeast Mainline Area transactional throughput will be increased and the Southwest Mainline Area transactional throughput will be correspondingly decreased by an amount equal to the volumes transported on the CenterPoint contract. ANR attached as Appendix A sample calculations showing how this adjustment would have been incorporated into ANR's March 1, 2004 Filing.

38. WDG argues that ANR should be required to clarify its proposed treatment of fuel associated with its capacity on CenterPoint to match the direction of flow of deliveries from ANR's Southwest Mainline Area to ANR's Southeast Mainline Area.<sup>30</sup> WDG explains that ANR's proposed resolution for this mismatch is to assign the fuel retained and transactional throughput associated with ANR's utilization of the CenterPoint capacity to the Southeast Mainline area. WDG states that it does not object to ANR's proposed resolution for the mismatch associated with its CenterPoint service, provided that all transactions conducted by ANR in connection with its CenterPoint service are for deliveries from ANR's Southwest Leg to its Southeast Leg. However, WDG states that it is not clear that this is the case now, or whether this will be the case in the future.<sup>31</sup> WDG states that if in fact the transaction flow is in the opposite direction (from ANR's Southeast Leg to its Southwest Leg) then ANR's proposed resolution would result in artificially high fuel rates on ANR's Southwest Leg and artificially low fuel rates on ANR's Southeast Leg.

39. WDG believes that ANR should clarify that the allocation will match the direction of flow so that if flows remain the same as they currently are, then the allocation will be as proposed and if flows reverse, then ANR's tariff should make it clear that the allocation will similarly reverse. WDG contends that ANR should also be required to make annual filings providing information on the direction of the transactional flow between ANR's Southeast Leg and Southwest Leg associated with its CenterPoint service so that shippers can fully assess the impacts on fuel use.

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<sup>30</sup> According to WDG, in its February 10 Compliance Filing, ANR stated that, although fuel and L&U gas provided by ANR to CenterPoint is allocated to the Southeast Mainline area, the transactional throughput associated with the CenterPoint contract is assigned to the Southwest Mainline area, which results in a situation where the fuel costs paid to CenterPoint are assigned on the basis of physical flow, but fuel is retained and volumes are assigned on the basis of contractual receipt and delivery points.

<sup>31</sup> WDG Protest at 9. WDG states that ANR merely states that "the physical flows under this contract have been primarily west to east based on economics and nominations of ANR's shippers. WDG Protest at note 20.

40. In its Answer, ANR clarifies that the flow under the CenterPoint contract has historically been and continues to be from the Southwest to the Southeast. Additionally, according to ANR, there has been a mismatch between the transactional throughput and fuel allocation associated with the CenterPoint contract that ANR's proposed shift of transactional throughput from Southwest to Southeast is designed to correct. ANR states that, in the future should ANR experience any reverse flow on the CenterPoint contract from east to west, it agrees with WDG that the allocation of CenterPoint fuel and transactional throughput should change accordingly. To this end, ANR states that it has reached agreement with WDG that the CenterPoint fuel use and transactional throughput will be allocated based upon the direction of flow under the CenterPoint contract. ANR states that it has reflected this clarification in new language it proposes in section 1.68 of its GT&C included in Appendix A, which is attached to its answer. If the Commission accepts this proposed clarification, ANR states that it will file a revised tariff sheet incorporating the proposed clarification to be effective April 1, 2005, as originally proposed in the February 10, 2005 compliance filing.<sup>32</sup>

41. The Commission accepts ANR's proposed clarification. Within 15 days of the date of this order, ANR is directed to file a revised tariff sheet incorporating its clarification to be effective April 1, 2005.

The Commission orders:

(A) The requests for rehearing are granted in part and denied in part and the requests for clarification are granted.

(B) The tariff sheets identified in footnote 3 are accepted to be effective as proposed.

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<sup>32</sup> ANR Answer at 1-2. ANR states that this clarification will have no impact on ANR's annual fuel filing of March 1, 2005, in Docket No. RP05-217-000, since all flows under the CenterPoint contract for the period covered by such filing were from west to east. *Id.* at note 2. Dominion filed comments supporting ANR's proposed clarification and requests that the Commission accept proposed section 1.68, making it effective as ANR proposes.

(C) ANR is directed to file a revised tariff sheet, within 15 days of the date of this order consistent with the discussion in the body of this order.

By the Commission. Commission Kelly not participating.

( S E A L )

Linda Mitry,  
Deputy Secretary.