

Cited as "1 ERA Para. 70,519"

Midwestern Gas Transmission Company (ERA Docket No. 80-17-NG), October 16, 1980.

Order Amending Authorization to Import Natural Gas From Canada

[Opinion and Order]

### I. Background

On July 23, 1980, Midwestern Gas Transmission Company (Midwestern) filed, pursuant to Section 3 of the Natural Gas Act, a Petition to Amend Existing Authorization to Import Natural Gas with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE). 1/ Midwestern's petition requests authorization to extend previous import authority issued under ERA Docket No. 79-04-NG.

In an order issued on August 9, 1979, 2/ we authorized Midwestern "to import an additional daily volume of 350,000 Mcf per day during a period beginning November 16, 1978, to and including October 31, 1980, or until a total volume of 114,000,000 Mcf has been imported, whichever comes first." This authorization, in turn, amended the authorization in Federal Power Commission (FPC) Opinion No. 521, issued June 20, 1967. 3/

Midwestern's Petition now before us requests authorization to extend the delivery term to October 31, 1981, from the currently authorized October 31, 1980. The price to be charged is U.S. \$4.47 per MMBtu (\$4.17 per GJ), which is the current Canadian uniform export price for natural gas. Midwestern does not request any increase in the maximum daily volumes of 350,000 Mcf per day or the total quantity of 114,000,000 Mcf as previously authorized. Midwestern also requests that an additional import point be added to permit delivery of up to 75,000 Mcf per day at the existing interconnection of the facilities of TransCanada Pipelines Ltd. (TransCanada) and Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee) at Niagara Falls, New York. 4/ The balance of the 350,000 Mcf per day is to be delivered by TransCanada to Great Lakes Gas Transmission Company (Great Lakes) at the existing pipeline interconnection near Emerson, Manitoba. Great Lakes is to continue redelivery of these volumes for the account of Midwestern to Northern Natural Gas Company, Division of InterNorth, Inc. (Northern) for resale to Northern, or to Michigan Wisconsin Pipeline Company for resale by Midwestern to Tennessee and/or Natural Gas Pipeline Company of America (Natural).5/ Tennessee and Northern have the right to purchase not less than 45 percent of the quantity

available for purchase on a given day, while Natural has the right to take not less than 10 percent.

According to the November 16, 1978, Agreement amending the original June 30, 1967, Gas Purchase Contract, Midwestern and TransCanada "recognize that they are respectively obligated to use their best efforts to schedule, deliver and receive" the gas covered by this application.<sup>6/</sup> Similarly, the Gas Resale Agreement dated January 2, 1979, between Midwestern and Tennessee, Northern and Natural obligates the purchasers to "endeavor" to receive the volumes offered by Midwestern. <sup>7/</sup>

## II. Intervenors

Petitions to intervene were received from Northern and Natural. Northern's petition contains no comments on the merits of the application and Natural's petition supports Midwestern's application. In the absence of any opposition to the petitions, intervention is granted.

## III. Decision

Upon review of Midwestern's application, we have determined that the continued importation of natural gas as described therein is not inconsistent with the public interest and should be authorized.<sup>8/</sup> We have already established in our previous order that importation of the volumes in question is consistent with the public interest. Furthermore, in Opinion and Order No. 14B,<sup>9/</sup> the present border price of \$4.47 per MMBtu, requested in this application, was determined to be a reasonable price compared to the cost of alternate fuels in U.S. markets.

We have previously expressed our concern over several aspects of natural gas imports, which we are examining closely in ongoing Canadian import proceedings.<sup>10/</sup> These include the general issue of possible uneconomic and unnecessary reliance on imported natural gas and the more specific issue whether conditions, such as modification of take or pay clauses, should be imposed.

The import under consideration here is distinguishable from these other cases in that it deals with Canadian gas that has been offered to Midwestern on a "best efforts" basis with no minimum bill or take-or-pay requirement and for a short term. Under these conditions, Midwestern and its resale customers are under no obligation to purchase costly imported gas when less expensive domestic supplies are available and can be taken without jeopardizing future domestic supply availability. Thus, the contractual arrangement under question

does not raise the possibility of unnecessary and uneconomic reliance.

### Order

For the reasons set forth above, ERA hereby orders that:

A. Pursuant to Section 3 of the Natural Gas Act, the authorization issued to Midwestern Gas Transmission Company in Ordering Paragraph (A) of the DOE/ERA Order Granting Amendment to Authorization to Import Natural Gas, issued August 9, 1979, is hereby amended to change the expiration date "October 31, 1980" to read "October 31, 1981," in accordance with the June 16, 1980, Agreement amending the June 30, 1967, Gas Purchase Contract.

B. Pursuant to Section 3 of the Natural Gas Act, Midwestern Gas Transmission Company is hereby authorized to import the volumes authorized in Paragraph A above at a unit price not to exceed U.S. \$4.47 per MMBtu (U.S. \$4.17 per GJ).

C. The petitions for leave to intervene of Northern Natural Gas Company, Division of InterNorth, Inc., and Natural Gas Pipeline Company of America, are hereby granted, subject to such rules of practice and procedure as may be in effect, provided that their participation shall be limited to matters affecting asserted rights for leave to intervene and that the admission of such intervenors shall not be construed as recognition by ERA that they might be aggrieved because of any order issued by ERA in this proceeding.

Issued in Washington, D. C., October 16, 1980.

--Footnotes--

1/ Notice of receipt of this application appeared in the Federal Register on August 12, 1980 (45 FR 53512).

2/ Order Granting Amendment to Authorization to Import Natural Gas; Midwestern Gas Transmission Company, ERA Docket No. 79-04-NG, issued August 9, 1979.

3/ 37 FPC 1070 (1967).

4/ Because no new facilities would be required, DOE has determined that granting authorization to import the requested volumes of natural gas is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of

1969 (42 U.S.C. Secs. 4321, et seq. (1976)). Therefore, neither an environmental impact statement nor an environmental assessment is required.

Under the Secretary's delegation orders to the ERA and the FERC (DOE Delegation Order Nos. 0204-54 and 0204-55, 44 FR 56735-36, October 2, 1979), the FERC has the responsibility to determine the point of importation. Hence, we are not issuing a determination on the request to add an additional point of entry.

5/ The application of Midwestern Gas Transmission Company for a Certificate of Public Convenience and Necessity, FERC Docket No. CP79-161, January 26, 1979, contains a copy of the Gas Resale Agreement, dated January 2, 1979, between Midwestern and Tennessee, Northern and Natural. The Resale Agreement was amended on June 27, 1980, to reflect the extended term.

6/ The June 30, 1967 Gas Purchase Contract was amended on June 16, 1980, extending the delivery period until October 31, 1981.

7/ See note 5, *supra*.

8/ Sections 301 and 402(f) of the Department of Energy Organization Act (Pub. L. No. 95-91) give the Secretary of Energy the authority to authorize the import or export of natural gas pursuant to Section 3 of the Natural Gas Act. The Secretary delegated this responsibility to the Administrator of the ERA on October 1, 1977 (42 FR 50726). Later, the Secretary issued two delegation orders redefining the areas of jurisdiction between ERA and FERC in deciding applications to import natural gas (DOE Delegation Order Nos. 0204-54 and 0204-55, 44 FR 56735, October 2, 1979).

9/ See DOE/ERA Opinion and Order No. 14B, Inter-City Minnesota Pipelines Ltd., Inc., et al., ERA Docket Nos. 80-01-NG, et al., issued May 15, 1980.

10/ This examination is currently underway for flowing gas imports from Canada under Inter-City Minnesota Pipelines, Ltd., Inc., et al., ERA Docket Nos. 80-01-NG, et al., and new gas imports under Transcontinental Gas Pipe Line Corporation, and Tennessee Gas Pipeline Company, ERA Docket No. 79-08-NG, and Northern Natural Gas Company, ERA Docket No. 79-24-NG.