

Cited as "1 ERA Para. 70,522"

Montana Power Company (ERA Docket No. 79-16-NG), October 23, 1980.

Conditional Decision Concerning the Application of Montana Power Company to Import Natural Gas From Canada

[Opinion and Order]

I. Background

On July 6, 1979, the Montana Power Company (MPC) filed an application 1/ with the Economic Regulatory Administration (ERA) of the Department of Energy for authorization, under Section 3 of the Natural Gas Act, to import natural gas from Canada. MPC proposes to import approximately 1,060 Mcf per day, or 364,600 Mcf in any consecutive 12-month period, or a total amount of approximately 3,707,000 Mcf of gas through December 31, 1993. 2/ In order to accomplish the purchase of this gas, the applicant proposes to construct approximately one mile of 4 1/2 inch pipeline from a point at the U.S.-Canadian boundary to a point in Montana connecting with applicant's existing gathering system.

MPC's purchase agreement with the seller of the natural gas, the Canadian-Montana Pipe Line Company (Canadian-Montana), dated May 1, 1979, sets the price at the international border price for gas exported from Canada to the United States, currently \$4.47 per MMBtu. Although the Agreement contains no take-or-pay provision, the Gas Purchase Contract between Canadian-Montana and the Canadian producers of the gas does contain a provision calling for a minimum "Daily Contract Quantity " of 80 percent of the producers' deliverability, but not more than 80 percent of the authorized export volumes.

In Opinion and Order No. 14, 3/ we denied without prejudice three applications for new imports, including MPC's application under reconsideration here. In that Order, we determined that although the requested price of \$4.47 per MMBtu significantly exceeded the cost of alternate fuels in U.S. markets, it was consistent with the public interest to allow U.S. firms temporarily to import the gas at that price if there was also a compelling showing that the gas was needed immediately to prevent a severe adverse impact on the public health, safety or welfare. We, therefore, granted interim authorizations to already flowing projects, but denied MPC's application and those for two other potential new imports on the basis that none demonstrated a compelling near term need for the gas warranting approval at a price substantially greater than the price of alternate fuels.

On March 17, 1980, MPC filed an Application for Rehearing of the February 16, 1980 decision. In this application, MPC states that the primary purpose of the original application was not to enhance MPC's gas supply, but instead to provide a solution to a gas drainage problem which exists because the Reagan Blackleaf Reservoir straddles the Montana-Alberta border. MPC argued that "[t]he ERA's evaluation of this application, based solely on [need] criteria, entirely misses the purpose of the application." 4/

On April 23, 1980, in DOE/ERA Opinion and Order No. 14A, 5/ we granted MPC rehearing for the purpose of further consideration.

On August 7, 1980, ERA held an informal conference on its own initiation to explore the facts surrounding the "drainage" issue raised by MPC in its Application for Rehearing. Present were counsel for MPC and Mr. Donald K. Percival of MPC. During the conference, MPC stated that denial of this import application would adversely affect overall system operations out of proportion to the size of the import under review and would jeopardize MPC's good relationship with the Canadian government.

According to MPC, two alternatives are now available to it as a result of the denial. It may continue to drain gas from the U.S. side of the field and risk a negative reaction by the Canadian government, upon whom it depends for a majority of its gas supplies, or it may discontinue production from its wells on the U.S. side of the field. According to MPC with respect to the latter alternative, "failure to produce gas from these leases located within the Blackfeet Indian Reservation will quickly lead to cancellation of the leases and loss of this low cost supply of gas to [MPC's] customers." 6/ MPC also states that such loss of domestic leases would lead to the transfer of the leases to another operator with the result that MPC would be obligated by company policy to purchase the domestic gas at a higher price, with no resolution of the import problem.

ERA questioned MPC about other compromise solutions, such as importing only those volumes produced from areas experiencing the most severe drainage. MPC believes that this suggestion would not be a long term solution to the problem and would result in an uneconomic operation for the Canadian producers, since there is no other market for the Canadian gas, which in turn could jeopardize MPC's access to Canadian supplies.

The Montana Public Service Commission (MPSC) filed a Notice of Intervention on March 5, 1980. On August 21, 1980, the Canadian Petroleum Association filed a Petition to Intervene in this Docket, as well as in the consolidated proceeding under Docket Nos. 80-01-NG, et al. No objections to

the Petition to Intervene were filed.

We wrote to the MPSC on July 28, 1980, requesting to be informed of its position on the proposed import in view of the fact that MPC's service area is solely within the State of Montana. On August 14, 1980, the MPSC replied, stating that "the proposed importation of natural gas is consistent with the public interest . . ." and the "denial of the importation authority puts at risk other gas supply sources in Montana and Canada." Citing the "potentially serious consequences of the DOE/ERC denial of import authorization," the MPSC recommended that the import authority should be granted.

II. Environmental Determination

The Secretary of Energy has delegated to the Administrator of ERA the responsibility to authorize imports pursuant to Section 3 of the Natural Gas Act, taking into consideration such broad national policy issues as the security of supply, effect on the balance of payments, national need for the gas, and the price at the border. 7/ Certain other areas of responsibility, however, have been delegated to the Federal Energy Regulatory Commission (FERC). Specifically, FERC has jurisdiction over "all functions under Section 3 of the Natural Gas Act to approve or disapprove the construction and operation of particular facilities and the site at which they would be located . . ." 8/ Thus, the jurisdiction over the siting and construction of the new facilities required by this import is clearly FERC's.

The National Environmental Policy Act of 1969 (NEPA) 9/ requires ERA to give appropriate consideration to the environmental effects of its proposed actions, in this case, authorization to import natural gas. FERC also has the statutory responsibility (as well as considerable staff expertise) to perform an environmental review before making its own decision on MPC's FERC Section 3 application. It is appropriate, therefore, that FERC should be the lead agency in terms of reviewing the environmental impacts of this import.

Since we cannot now determine whether this import is a major federal action requiring the preparation of an environmental impact statement under NEPA, we are precluded from issuing a final order approving the project. We are, therefore, issuing a conditional order based on our review of the record before us. Once the FERC has completed whatever environmental review is necessary, we will complete our own environmental review based on the FERC's analysis, reconsider this opinion and issue a final order on MPC's application. Our conditional decision clears the way for FERC to perform the environmental review and indicates to the parties ERA's preliminary determination in this case. Since it is not a final order, it does not

jeopardize the environment or limit our alternatives in making a final decision.

III. Decision

The Applicant is basing its case on a three alternative scenario. The first option is to drain Canadian reserves through full production from the U.S. portion of the field. MPC believes that this act is inequitable and may lead to "retaliation" by the Canadian government, endangering current and future imports from Canada, upon which MPC is heavily dependent for the majority of its gas supply. Secondly, it can halt production from the U.S. field and, consequently, end the unauthorized draining of Canadian reserves; this may lead to cancellation of MPC's leases on at least part of the U.S. field. Finally, ERA can approve MPC's plan to import gas from the Canadian side of the field, ending the unauthorized draining of the Canadian field and allowing continued production from the U.S. side.

In light of the situation as it exists today, denying authorization of these small volumes may not serve Montana's and the U.S.'s interests, both in terms of straining U.S.-Canadian relations and jeopardizing MPC's access to low cost domestic gas. Moreover, the support for this project by the MPSC, which will have regulatory responsibility over this gas once it enters the country, and the lack of any stated opposition, persuades us that importation of these volumes would be not inconsistent with the public interest.

Since the issuance of Opinion and Order No. 14, we have subsequently determined^{10/} that the current border price of \$4.47 per MMBtu is competitive with the price of alternate fuels in U.S. markets. We, therefore, reverse our earlier denial and authorize this import at the border price.

IV. Further Proceedings

ERA is currently conducting proceedings in several Canadian natural gas import cases^{11/} to examine the effects of reliance on Canadian natural gas imports and contract provisions, such as take-or-pay clauses, which may operate to create uneconomic reliance on imported supplies. However, because of the circumstances of this case, including the desire to avoid draining the Canadian side of the Reagan Blackleaf Reservoir or jeopardizing MPC's access to the low cost pool on the United States side, and the absence of a take-or-pay provision in the import contract, it is unnecessary to order further proceedings at this time in this docket. At the same time, of course, we retain our statutory right in Section 3 of the Natural Gas Act to reopen these proceedings subsequently and to amend the order as necessary or

appropriate.

Order

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

A. Pursuant to Section 3 of the Natural Gas Act, authorization is hereby granted to Montana Power Company to import up to approximately 1,060 Mcf of natural gas per day or up to approximately 164,000 Mcf of natural gas per year at a price not to exceed U.S. \$4.47 per MMBtu (U.S. \$4.17 per GJ) through December 31, 1993, pursuant to the terms of its purchase agreement with the Canadian exporter, dated May 1, 1979.

B. The authorization in Ordering Paragraph A is conditional pending a final ERA order upon completion, and review by ERA, of any FERC environmental analyses on this project.

C. The petition for leave to intervene of the Canadian Petroleum Association is hereby granted, subject to such rules of practice and procedure as may be in effect, provided that its participation shall be limited to matters affecting asserted rights and interests specifically set forth in its petition for leave to intervene and that the admission of such intervenor shall not be construed as recognition by ERA that it might be aggrieved because of any order issued by ERA in this proceeding.

Issued in Washington, D. C. on October 23, 1980.

--Footnotes--

1/ "Notice of Application for Authorization to Import Natural Gas and Invitation to Submit Petitions to Intervene" was published in the Federal Register on August 17, 1979 (44 FR 48321).

2/ The Canadian National Energy Board, in Order No. G0-3-79, dated April 5, 1979, authorized Canadian-Montana to export 30,000 cubic meters (1,059 Mcf) per day, 10,300,000 cubic meters (363,752 Mcf) in any consecutive 12-month period and 105,000,000 cubic meters (3,708,150 Mcf) during the term of the license, which extends through December 31, 1993.

3/ DOE/ERA Opinion and Order Lo. 14, Inter-City Minnesota Pipelines Ltd., Inc., et al., ERA Docket Nos. 80-01-NG, et al., issued February 16, 1980.

4/ MPC's Application for Rehearing at page 2.

5/ See DOE/ERA Opinion and Order No. 14A, Inter-City Minnesota Pipelines Ltd., Inc., et al., ERA Docket Nos. 80-01-NG, et al., issued April 23, 1980.

6/ MPC's Application for Rehearing at page 3.

7/ DOE Delegation Order No. 0204-54, 44 FR 56735, October 2, 1979.

8/ DOE Delegation Order No. 0204-55, 44 FR 56736, October 2, 1979.

9/ 42 U.S.C. Secs. 4321, et seq. (1976).

10/ 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.

11/ See DOE/ERA Opinion and Order No. 14B and the subsequent Prehearing Order issued July 9, 1980; DOE/ERA Opinion and Order No. 17, Transcontinental Gas Pipe Line Corporation, Tennessee Gas Pipeline Company, ERA Docket No. 79-08-NG, et al., issued July 7, 1980; and DOE/ERA Opinion and Order No. 19, Northern Natural Gas Company, ERA Docket No. 79-24-NG, issued August 29, 1980.