

Cited as "1 ERA Para. 70,505"

Inter-City Minnesota Pipelines Ltd., Inc. (ERA Docket No. 80-01-NG), Great Lakes Gas Transmission Company (ERA Docket No. 80-02-NG), Montana Power Company (ERA Docket No. 80-03-NG), Michigan Wisconsin Pipe Line Company (ERA Docket No. 80-04-NG), Northwest Pipeline Corporation (ERA Docket No. 80-05-NG), Midwestern Gas Transmission Company (ERA Docket No. 80-06-NG), Pacific Gas Transmission Company (ERA Docket No. 80-07-NG), St. Lawrence Gas Company, Inc. (ERA Docket No. 80-09-NG) and Vermont Gas Systems, Inc. (ERA Docket No. 80-10-NG). July 9, 1980.

Prehearing Order

[Opinion and Order]

On May 15, 1980, the Economic Regulatory Administration of the Department of Energy issued Opinion and Order No. 14B, approving the continued importation of Canadian natural gas under existing contracts at a border price of \$4.47 (U.S.) per MMBtu upon a finding that this price was competitive with the costs of alternative fuels. Also on that date, Opinion and Order No. 16A was issued approving Mexican gas imports upon essentially the same terms and findings. In these opinions, ERA ordered further proceedings to determine whether the Canadian and Mexican import authorizations should be conditioned to reduce unnecessary or uneconomic dependence on natural gas imports.

On June 10, 1980, ERA held a prehearing conference in Washington, D.C. to determine what issues relating to the authorization of Canadian natural gas imports in ERA Docket Nos. 80-01-NG, et al. required further examination and whether evidentiary hearings are required to resolve those issues. After review of the pleadings filed in this proceeding, related decisions of the Federal Energy Regulatory Commission on the matter of take-or-pay type obligations in Canadian import contracts for gas that will flow through the pre-built portion of the Alaskan Natural Gas Transportation System, and the discussion at the prehearing conference, we have determined that certain issues shall be explored further in the manner outlined below.

The parties may submit written materials including exhibits, prepared testimony, briefs and other materials they consider appropriate on the following factual, legal, and policy issues pertaining to the particular docket(s) in which they have an interest. Where a party considers its written submission applicable to more than one gas import at issue in this combined proceeding, it should so indicate, in which case a separate filing need not be made in each docket. If a party believes that one or more of the following

questions is not or should not be considered applicable to a particular docket, it should so indicate and state the reasons why. While the nine dockets involved in this proceeding have been combined for procedural purposes because the legal and policy issues are similar, ERA recognizes that factual variations among dockets exist and will take those differences into account before issuing a final order or orders.

The questions that will be at issue in these further proceedings are as follows:

A. Are present and future supplies of Canadian natural gas imports a secure, reliable, and economic source of energy for the region using gas imported by each applicant?

B. Why should not ERA, as a condition to its import authorization, limit the applicant's take-or-pay type obligation in the contracts under review in each docket to a fixed dollar amount, determined by multiplying the minimum take required under the contract by the border price in effect when the contract was signed (with no escalation for inflation)?

1. What is the purpose of the applicant's take-or-pay type obligation?

2. Has the take-or-pay type obligation in each contract been legally abrogated by subsequent increases in the border price of Canadian gas?

3. Has the applicant foregone takes of domestic natural gas in order to take imported Canadian gas? If so, identify the volumes of domestic natural gas not taken for this reason. Is this likely to occur in the future?

4. Would the minimum revenue requirements of the applicant's suppliers be met if the import authorization is conditioned as described above? If not, demonstrate why the proposed formula would be inadequate.

C. Why should not ERA, as a condition to its import authorization, require that each applicant, including those whose systems are entirely dependent upon Canadian supplies, obtain from ERA approval of a contingency plan under which each applicant would take appropriate steps to obtain supplemental supplies of domestic natural gas in order to lessen dependence on Canadian gas and would, during a period of Canadian gas curtailment, take appropriate action to ensure continued service to high priority customers in the event that currently authorized Canadian supplies are curtailed for any reason (including, but not limited to, curtailment because the contracts for Canadian gas are not renewed, Canadian government approval of further imports

is not secured, or U.S. regulatory approval of escalating prices is not obtained)?

D. Why should not ERA require other means to reduce uneconomic reliance on Canadian imports, viz:

1. Require, as a condition to an import authorization, that distribution companies or other end-users contract directly with the importer in order to send clearer price signals regarding the true cost of Canadian imports;

2. Restrict, as a condition to its import authorization, the use of Canadian gas to supply new residential and small commercial hookups in cases where distribution companies are dependent on Canadian natural gas for all their supplies, in order to avoid overdependence by non-curtable high-priority users on Canadian natural gas;

3. Recommend to FERC that a new, separate rate schedule reflecting actual costs of imported gas be applied to those customers of applicant-pipelines which elect to purchase natural gas imported from Canada, so that the true cost of the imports is conveyed?

In light of the policy set forth in Opinion and Order No. 14B that imported sources of energy such as Canadian natural gas should be viewed as marginal sources of energy, we especially solicit specific reasons, if any, why ERA should not impose conditions that would create an economic environment that would tend to discourage uneconomic and unnecessary reliance on imported natural gas. In particular, we direct the parties' attention to the recent FERC decisions in the Northern Border case^{1/} limiting the take-or-pay type obligations at issue in that case and commending this issue to ERA for consideration in other proceedings involving Canadian gas imports. In addition to comments and evidence on other issues, parties are asked to demonstrate why ERA should not follow the policy and precedent established by FERC in the Northern Border case,^{2/} and particularly in its April 28, 1980 order in that case.

The parties listed in the Appendix to this Order filed petitions for leave to intervene out of time, and were granted permission to participate in the prehearing conference. There being no objection to their intervention, the petitions for leave to intervene of the City of Fargo, North Dakota; the Independent Petroleum Association of Canada; Texas Eastern Transmission Corporation; British Columbia Petroleum Corporation; Border Gas, Inc.; and United Gas Pipe Line Company are formally granted in this Order. Northern Natural Gas Company has not, perhaps through inadvertence, formally petitioned

to intervene in ERA Docket Nos. 80-01-NG, et al., although it did appear at the prehearing conference. It will be granted intervenor status in these proceedings provided that a petition for such status be submitted by July 30, 1980.

Order

ERA hereby orders:

A. Submissions

1. The parties may file and serve written initial and rebuttal submissions, including exhibits or prepared testimony where appropriate, discussing the factual, legal, and policy issues enumerated herein that pertain to the particular docket(s) in which the party is interested. Where the submission pertains to more than one docket, it should be identified as such.

2. Service shall be by mail or by personal delivery to all parties in the consolidated proceeding and by filing with the Division of Natural Gas, Room 7108, 2000 M Street, N.W., Washington, D.C. 20461. Submissions shall be available for public inspection at this address.

3. All written submissions of an evidentiary nature shall be under oath. Submissions constituting argument on legal or policy issues need not be under oath.

4. Submissions shall be made in accordance with the following schedule:

a. All initial submissions shall be served and filed no later than 4:30 p.m. e.d.t., July 30, 1980.

b. All rebuttal submissions shall be served and filed no later than 4:30 p.m., e.d.t., August 20, 1980.

B. Hearing

1. ERA may, upon its own motion or at the request of the parties, determine that an evidentiary hearing or an oral argument is required in one or more of the dockets under review.

2. The parties may request an evidentiary hearing or an oral argument in either the initial or rebuttal submissions. A party making such a request

shall provide specific reasons why such a hearing or oral argument is necessary, shall identify the factual issues which it believes are in dispute and require an evidentiary hearing, and shall provide a suggested schedule for such a proceeding.

C. Procedures

1. These proceedings shall be conducted in accordance with the FERC Rules of Practice and Procedure, except where modified by ERA regulation or by order in this proceeding.

2. The staff of the Natural Gas Division of the Economic Regulatory Administration and the Office of the General Counsel of the Department of Energy shall act in advisory capacity to the decision-maker and will not participate as parties to the proceeding.

D. Intervenors

The petitions for leave to intervene out of time of the City of Fargo, North Dakota; the Independent Petroleum Association of Canada; Texas Eastern Transmission Corporation; British Columbia Petroleum Corporation; Border Gas, Inc.; and United Gas Pipe Line Company are hereby granted in this consolidated proceeding (ERA Docket Nos. 80-01-NG, et al.), subject to such rules of practice and procedure as may be in effect, provided that the participation of such intervenors shall be limited to matters affecting such asserted rights and interests specifically set forth in their petitions for leave to intervene and that the admission of such intervenor shall not be construed as recognition by ERA that they might be aggrieved because of any order issued by ERA in this proceeding. Northern Natural Gas Company is also granted intervention on the same terms and conditions, provided it files an appropriate petition to intervene by July 30, 1980.

Issued in Washington, D.C., July 9, 1980.

--Footnotes--

1/ FERC Order of April 08, 1980 in Northwest Alaska Pipeline Company, Docket Nos. CP78-123, et al., at 55-64; FERC Order of June 20, 1980 in Northwest Alaska Pipeline Company, Docket Nos. CP78-123, et al., at 2-10.

2/ It will be noted that certain of the issues raised at the prehearing conference have not been expressly enumerated herein. They are subsumed in the issues listed above.

Appendix: Supplement to Service List

Supplement to Service List:

Parties	Representatives
City of Fargo, North Dakota	Wayne O. Solberg, City Attorney Post Office Box 1897, Fargo, North Dakota 58107
Independent Petroleum Association of Canada	Mr. Andy Potter, Manager, Regulatory Affairs, Independent Petroleum Ass'n of Canada, Suite 1610 Norcen Tower, 715--5th Avenue, Q.W., Calgary, Alberta, Canada T2P 2X6 Jerry M. Brady, Attorney Suite 505, 2033 M Street, N.W., Washington, D.C. 20036
Texas Eastern Transmission Corporation	Earle H. Mowrey, P.O. Box 2521, Houston, Texas 77001 Texas Eastern Transmission Corporation, Suite 901--1660 L St., N.W., Washington, D.C. 20036
British Columbia Petroleum Corporation	K.C. Mackenzie, M.M. Moseley, Guild, Yule, Schmitt, Lane, Sullivan & Finch Suite 1680, One Bentall Centre, 505 Burrard St., Vancouver, British Columbia, Canada V7X 1C9
Border Gas, Inc.	Jack H. Ray, President, Border Gas, Inc., P.O. Box 2511, Houston, Texas 77001, (713) 757-2131 Duke R. Ligon, Esq., Paul W. Fox, Esq., Patricia A.

Fry, Esq.,
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20006

United Gas Pipe Line Co. W. Devier Pierson, M. Frazier
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Northern Natural Gas Co. Daniel B. O'Brien, Jr., General
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68102
Charles A. Case, Jr.,
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