

Cited as "1 ERA Para. 70,532"

St. Lawrence Gas Company, Inc. (ERA Docket No. 80-11-NG), June 22, 1981.

DOE/ERA Opinion and Order No. 33

Order Authorizing Increased Importation of Natural Gas From Canada

[Opinion and Order]

I. Background

On February 28, 1980, St. Lawrence Gas Company, Inc. (St. Lawrence), under Section 3 of the Natural Gas Act (NGA), filed with the Economic Regulatory Administration (ERA) an application to amend its authorization to import natural gas from Canada. St. Lawrence requests that ordering paragraph A of Federal Power Commission (FPC) Opinion No. 347, issued August 8, 1961 (26 FPC 265), as amended, be amended further to permit St. Lawrence to import 9,700,000 Mcf of natural gas annually and a maximum daily volume of 43,000 Mcf.^{1/} St. Lawrence is currently authorized to import 6,500,000 Mcf annually and a maximum daily volume of 30,000 Mcf.

St. Lawrence is a natural gas distribution company and imports its entire natural gas supply from and is the sole export customer of an affiliate, Niagara Gas Transmission Ltd. (Niagara).^{2/} Niagara purchases its gas from TransCanada Pipelines Ltd. (TransCanada). Niagara has been authorized by the National Energy Board of Canada (NEB) to export the additional quantities of gas St. Lawrence proposes to import.^{3/} The additional import volumes will be delivered through existing facilities and no new facilities will be constructed.^{4/} St. Lawrence proposes to pay the current border price of U.S. \$4.94 per MMBtu for this gas.^{5/}

On May 11, 1981, St. Lawrence filed a supplement to its application and a request for expedition. Appended to the filing was a copy of an amendment dated March 3, 1981, to the Gas Purchase Contract between Niagara and TransCanada which revises Niagara's "take-or-pay" obligations. St. Lawrence's Gas Purchase Contract with Niagara "flows through" any take-or-pay obligations incurred by Niagara. Under the amendment, TransCanada waives the take-or-pay provisions until such time as Niagara purchases volumes for export slightly in excess of 10,000,000 Mcf annually. This limit is greater than the total authorized volume sought by St. Lawrence.

In its request for expeditious action, St. Lawrence stated that timely

approval is required to avoid curtailment of interruptible customers on July 1, 1981, and to support an application by TransCanada before the NEB seeking authorization to construct certain facilities to accommodate already authorized export of volumes to Niagara and others.

II. Intervention and Comment

ERA published a notice of receipt of St. Lawrence's application in the Federal Register on April 4, 1980 (45 FR 23055), and solicited protests, comments, petitions to intervene, and notices of intervention. No protests, comments or petitions to intervene were received.

ERA did receive on March 24, 1980, a notice of intervention from the Public Service Commission of the State of New York (PSCNY). The PSCNY stated that it "does not oppose St. Lawrence's request" and "that if sufficient demand is present it should be supplied." The PSCNY did not request a hearing, but did indicate concern over the lack of information in St. Lawrence's application about any take-or-pay obligations. Subsequently, St. Lawrence responded to that concern in a letter to the PSCNY, dated April 14, 1980. The letter was submitted to ERA on April 21, 1980, and is part of the record. In that letter, St. Lawrence explained that, in its view, "the contractual minimum annual charge (the 90 percent take-or-pay obligation) remains suspended and superseded for so long as the Government of Canada prescribes a commodity/only export price such as the one now prescribed." Additionally, St. Lawrence in its May 11, 1981, supplement to its application, states that "even if St. Lawrence's position on 'abrogation' is incorrect, the March 3, 1981 contract amendment [between Niagara and TransCanada] assures that St. Lawrence and its customers cannot sustain any adverse take-or-pay consequences."

III. Decision

In accordance with our responsibility under Section 3 of the Natural Gas Act, we find that St. Lawrence's request to import additional volumes of natural gas is not inconsistent with the public interest and should be authorized. This determination was made in view of the circumstances present in this case which override our general unresolved concerns about increased dependency on imported natural gas.

Our concern about increased reliance on Canadian natural gas has been raised previously in consolidated ERA Docket Nos. 80-01-NG, et al., Inter-City Minnesota Pipelines Ltd., Inc., et al.⁶ There we considered the extent of importers' (including St. Lawrence's) dependence on Canadian natural gas and the extent to which their service areas have access to alternate natural gas

supplies. Because these and other issues raised in Docket Nos. 80-01-NG, et al. may be more appropriately considered in bilateral discussions with Canadian officials, ERA suspended final resolution of the consolidated dockets until after government-to-government talks.^{7/}

In the case of St. Lawrence, the distributor currently obtains its entire system supply of natural gas from a single Canadian exporter. St. Lawrence has previously indicated that it has no practical means of obtaining any natural gas from domestic sources.^{8/} It is clear, however, that this reliance on imported natural gas will continue whether or not St. Lawrence's current request is authorized. Thus, ERA has examined in this docket only the incremental increase in that dependency which would result from approval of the request.

St. Lawrence bases its request for increased volumes on two grounds. First, in its May 11, 1981 Request for Expedition, St. Lawrence points out that "absent timely ERA approval, St. Lawrence will be compelled to curtail completely gas service to 13 interruptible customers beginning July 1, 1981." The company states that this level of curtailment will be necessary because of current annual import volume limitations.

In addition, St. Lawrence states that the requested increase in imports will be needed to serve projected new customers. The largest share of the proposed new import volumes is projected to be sold to firm and interruptible industrial customers,^{9/} who are the users best able to cope with the ramifications of any supply shortfall and to assess the value of this gas in terms of price, availability, and long-term reliability.

As we noted earlier, the PSCNY did express some apprehension about the lack of information about any take-or-pay obligation in St. Lawrence's application. In view of St. Lawrence's direct correspondence with the PSCNY, and its March 3, 1981 Gas Purchase Contract amendment submitted to ERA, we are of the opinion that the PSCNY's concerns have been answered satisfactorily. Under the recent contract amendment, St. Lawrence has no take-or-pay obligation until after it takes approximately 10 Bcf per year. Since this order authorizes St. Lawrence to only take 9.7 Bcf per year, the take-or-pay clause should not have to be invoked.

On balance, we believe the possible immediate curtailment of St. Lawrence's interruptible industrial customers and the PSCNY's concurrence in the distributor's intentions to serve new customers outweigh our general concern about increasing dependency on Canadian imports. Therefore, we find the authorization sought by St. Lawrence is not inconsistent with the public

interest. Nevertheless, we have strong reservations about authorizing growth in the volume of natural gas imported by a company with no alternate gas supply or contingency plan to deal with even a temporary interruption of its imported gas supply, such as is the case with St. Lawrence. We have given considerable weight to the views of the PSCNY in reaching a decision in this case. Because all the gas at issue will be sold and consumed within the State of New York, the PSCNY is clearly in a position to assess carefully the need for this gas as well as the possible risks associated with total dependence on imported gas supplies.

Because some of the issues with respect to Canadian imports raised by ERA in earlier proceedings and applicable to all of Lawrence's gas imports remain before us, we are specifically reserving the right to take additional action in this docket should the need arise in the future. Accordingly, the parties are hereby placed on notice that any conditions subsequently adopted may be applied retroactively to the date of approval of this import if necessary and appropriate in the circumstances.

Order

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

A. Pursuant to Section 3 of the Natural Gas Act, Ordering Paragraph A of the Federal Power Commission Opinion No. 347 is hereby further amended to authorize St. Lawrence Gas Company, Inc. (St. Lawrence) to import no more than 43,000 Mcf of natural gas per day and no more than 9,700,000 Mcf of natural gas per year from Canada for the time period previously authorized.

B. Pursuant to Section 3 of the Natural Gas Act, St. Lawrence is hereby authorized to import the volumes specified in Paragraph A above at a unit price not to exceed U.S. \$4.94 per MMBtu (U.S. \$4.17 per GJ).

C. Pursuant to Section 3 of the Natural Gas Act, the authorization granted herein is subject to such conditions as may result from further proceedings in this case. Applicants and intervenors in this proceeding shall be bound by opinions and orders issued in further proceedings in this case.

Issued in Washington, D.C. on June 22, 1981.

--Footnotes--

1/ See also FPC Orders, issued on December 8, 1966, and February 17, 1971, in FPC Docket G-17500 and ERA Order, issued on July 13, 1979, in ERA

Docket No. 78-010-NG, amending ordering paragraph A of Opinion No. 347.

2/ St. Lawrence and Niagara are both subsidiaries of The Consumers Gas Corporation, a Canadian corporation.

3/ NEB Export License No. GL-55 was issued to Niagara on December 6, 1979, for the period January 1, 1980, through October 31, 1987.

4/ DOE has determined that granting authorization to import the requested volumes of natural gas is not a Federal action significantly affecting the quality of the environment within the meaning of the national Environmental Policy Act (40 U.S.C. 4321, et seq.) and therefore an environmental impact statement or environmental assessment is not required.

5/ In DOE/ERA Opinion and Order No. 29, issued March 27, 1981, in ERA Docket Nos. 81-09-NG, et al., Pacific Gas Transmission Company, et al., the current border price of U.S. \$4.94 per MMBtu for Canadian natural gas was found to be reasonable and not inconsistent with the public interest.

6/ See DOE/ERA Opinion and Order Nos. 14, issued February 16, 1980 (1 ERA Para. 70,502), 14A, issued April 1, 1980 (1 ERA Para. 70,507), 14B, issued May 15, 1980 (1 ERA Para. 70,508), and Prehearing Order, issued July 9, 1980 (1 ERA Para. 70,505).

7/ See DOE/ERA Order Suspending Consideration of Import Cases Pending Outcome of Inter-Governmental Discussions, issued on December 16, 1980, in Docket Nos. 80-01-NG, et al., Inter-City Minnesota Pipelines Ltd., Inc., et al.

8/ See Response to Question C, Response of St. Lawrence Gas Company, Inc. to Prehearing Order, August 22, 1980, in ERA Docket Nos. 80-0-NG, et al., Inter-City Minnesota Pipelines Ltd., Inc., et al.

9/ See Exhibit G of St. Lawrence's application dated February 28, 1980, in this docket.

Service List

St. Lawrence Gas Company, Inc.
ERA Docket No. 80-11-NG

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