Cited as "1 ERA Para. 70,543"

Transcontinental Gas Pipe Line Corporation (ERA Docket No. 81-26-NG), November 25, 1981

DOE/ERA Opinion and Order No. 37

Order Amending Authorization of Transcontinental Gas Pipe Line Corporation to Import Natural Gas from Canada

I. Background

On June 18, 1981, Transcontinental Gas Pipe Line Corporation (Transco) filed an application with the Department of Energy's (DOE) Economic Regulatory Administration (ERA), pursuant to Section 3 of the Natural Gas Act, to amend an existing natural gas import authorization granted by the ERA on July 7, 1980, to Transco and Tennessee Gas Pipeline Company (Tennessee), a Division of Tenneco, Inc. (Tennessee) in DOE/ERA Opinion and Order No. 17 (Order 17), to import natural gas from Sulpetro Limited (Sulpetro).1/ Tennessee is the purchaser and importer of one-half of the gas currently authorized, but is not a party to this application, By its application Transco requests the ERA to extend the term of the current authorization for an additional year, through October 31, 1983. Transco is not seeking a change in either the maximum daily volumes or annual volumes of natural gas previously authorized, but will itself import that portion of the gas previously taken by Tennessee. This application deals solely with the period from November 1, 1982, through October 31, 1983, and does not affect any prior period of time.

Order 17 conditionally approved the joint application of Transco and Tennessee to import up to a total of 75,000 Mcf of natural gas per day and 22 Bcf of natural gas per year for a limited term ending on November 1, 1982. Lying behind this application was a January 10, 1979, agreement between Sulpetro and Transco in which Sulpetro agreed to sell a total volume of 66 Bcf, Sulpetro obtained the approval of the Canadian National Energy Board (NEB) for export of this volume on December 6, 1979.2/ In its present application, Transco states that, because deliveries did not begin until August 1980, delivery of the full 66 Bcf at the rate of import approved in Order 17 would not be possible in the period allowed in that order for the import (i.e., through October 31, 1982). Accordingly, Transco and Sulpetro agreed on December 10, 1980, to extend the term through October 31, 1983. The NEB approved this extension on May 28, 1981.3/ Transco now seeks ERA approval of the new term.

The December 10, 1980, agreement between Sulpetro and Transco does not change the provisions in the January 10, 1979, Gas Sales Contract. The import volumes would be priced at the current Canadian border price of U.S. $4.94 per MMBtu. Furthermore, Transco states that it has reached an agreement in principle with Tennessee to have the gas enter the United States at a point near Niagara Falls, New York, by means of existing pipeline facilities owned and operated by Tennessee. Therefore, the import point and transportation route to be used would be the same as previously authorized. All other terms and conditions of the December 10, 1980, agreement are the same as those set forth in the previous contract with Sulpetro, which are currently authorized in Order 17.

In its application, Transco asserts that its gas supply is being depleted and that it needs the additional gas to augment rapidly declining reserves. Transco also asserts that the importation of natural gas from Canada will permit it to provide more reliable service to its high-priority New York area customers.

II. Intervenors and Comments

On August 4, 1981, the ERA notice of Transco's application to amend the existing authorization to import natural gas from Canada was published in the Federal Register.4/ The notice invited protests, comments, or petitions to intervene in the proceeding from interested persons. The ERA received eight (8) petitions to intervene.5/ There is no opposition to any petitions. Intervention is granted to all petitioners.

The ERA has not received any requests for a hearing nor does any intervenor oppose the application. None of the intervenors has expressed an opinion on the merits of Transco's application with regard to such issues as need for the gas, the effect on United States balance of payments, or import price.

United Gas Pipe Line Company (United) does not oppose the application but notes that the exports contemplated in this proceeding may affect the total amount of gas available for sale from Canada in the future and jeopardize United's ability to acquire volumes of Canadian gas at some later time. While we note United's comment, we do not believe that the issue it raises is relevant here because the quantities of gas to be imported have already been authorized for export by Canadian authorities and because of the short-term nature of this import.

III. Decision

Transco's application has been evaluated according to the standard established by Section 3 of the Natural Gas Act, and the criteria set forth in DOE Delegation Order No. 0204-54.6/ Under Section 3 of the Natural Gas Act, ERA must determine whether an import is not inconsistent with the public interest. In applying this standard, the ERA has the authority to review and determine certain issues, including, but not limited to, need for the gas to be imported and the proposed price to be charged for the import.

After a review of the record, that is, all of the material submitted during the course of this proceeding, we have concluded that an extension of our earlier authorization for an additional year is not inconsistent with the public interest.7/ Our decision rests primarily on the finding that, in this application, we have been requested to extend our previous authorization to permit Transco to continue to import, for an additional year, the same daily and annual quantities of gas under the same terms as were previously approved in Order 17. There is no change in any of the circumstances upon which we reached our determination in Order 17, except that, in the period from November 1, 1982, through October 31, 1983, Transco would take delivery of the total amount of gas imported in lieu of dividing those volumes with Tennessee.

In addition, we are satisfied Transco has made an adequate showing of need for the gas. In its application, Transco cites a troublesome history of curtailments in deliveries to its customers and an anticipated decline in estimated annual quantities available from Transco's committed sources of supply from 889 Bcf in 1980 to 276 Bcf in 1986. Because of this projected decline, Transco's total gas supplies estimated to be available for delivery to its customers during the November 1, 1982, through October 31, 1983, period will be less than Transco's supply levels at the time ERA issued Order. 17. Moreover, in DOE/ERA Opinion and Order No. 29, the ERA found that the present Canadian border price for natural gas exported to the United States of U.S. $4.94 per MMBtu is reasonable and not inconsistent with the public interest.8/ Consequently, we find that the price for this import is reasonable.

Accordingly, the ERA has determined that approval of the present application to permit the importation of Canadian natural gas from the period November 1, 1982, through October 31, 1983, at a price of U.S. $4.94 per MMBtu, as requested by Transco, is not inconsistent with the public interest within the meaning of Section 3 of the Natural Gas Act, and should be granted.

The previous authorization of this transaction was conditioned in Order 17 to the extent that the ERA reserved the right to impose additional conditions in the case as necessary to be consistent with any policy and precedent that might emerge in other ongoing Canadian import proceedings.

Subsequently, ERA determined that concerns about the take-or-pay obligations of U.S. importers and other issues relating to natural gas imports might be better resolved in discussions between the governments of Canada and the United States. Therefore, on December 16, 1980, the ERA suspended further consideration of the issues in all ongoing Canadian import proceedings, including the Transco and Tennessee case. We continue to reserve the right to take additional action in this docket that will parallel any future proceedings in ERA Docket No. 79-08-NG and the other Canadian import dockets cited previously.

The parties are reminded that any conditions subsequently adopted, such as limiting operation of the take-or-pay provisions may be applied retroactively to the date of approval of the import if necessary and appropriate in the circumstances.

Order

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

A. Pursuant to Section 3 of the Natural Gas Act, Transcontinental Gas Pipe Line Corporation (Transco) is authorized to import a daily volume of up to 75,000 Mcf and a maximum annual volume of 22 Bcf of natural gas from Canada during the period beginning November 1, 1982, through October 31, 1983, in accordance with the terms and conditions of Transco's December 10, 1980, Gas Purchase Agreement with Sulpetro Limited.

B. This natural gas may be imported at a price not to exceed the currently authorized price of U.S. $4.94 per MMBtu for Canadian natural gas.

C. Except as modified by Paragraphs A and B, all other terms and conditions in Order 17 authorizing the import of natural gas from Canada shall remain in effect, and shall apply to the imports authorized herein.

D. The petitions for leave to intervene, as set forth in this Opinion and Order, are hereby granted, subject to such rules of practice and procedure as may be in effect, provided that participation of intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions 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 these proceedings.

Issued in Washington, D.C. on November 25, 1981.

--Footnotes--

1/ See ERA Docket No. 79-08-NE, Transcontinental Gas Pipeline Corporation and Tennessee Gas Pipeline Company, 1 ERA Para. 70,512, Federal Energy Guidelines.

2/ NEB License No. GL-57 issued to Sulpetro on December 6, 1979.

3/ NEB Order No. AO-4-GL-57, May 28, 1981.

4/ 46 FR 39641 (August 4, 1981).

5/ Consolidated Edison Company of New York, Inc.; The Brooklyn Union Gas Company; Northern Natural Gas Company; Public Service Electric and Gas Company; Sulpetro Limited; TransCanada PipeLines Limited; United Gas Pipe Line Company; and United Mid-Continent Pipeline Company.

6/ See Delegation Order No. 0204-54 (44 FR 56735, October 2, 1979).

7/ For the purpose of making a determination with regard to the environmental effects resulting from Transco's importation of Canadian natural gas, the ERA submitted a copy of the firm's application to the DOE's Deputy Assistant Secretary for Environment, Safety and Health. The Deputy Assistant Secretary has completed a review of the application and has determined that because the proposed import will use existing pipeline facilities, granting this application 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. 4321 et seq. (1976)). Therefore, neither an environmental impact statement nor an environmental assessment is required.

8/ On January 15, 1981, the Government of Canada announced a border price of U.S. $4.94 per MMBtu for natural gas exported to the United States, effective April 1, 1981. In Opinion and Order No. 29, issued on March 27, 1981, ERA Docket No. 81-08-NG, et al., Pacific Gas Transmission Company, et al., (1 ERA Para. 70,528, Federal Energy Guidelines), the ERA authorized twelve (12) U.S. importers, including Transco, to pay that price for Canadian natural gas. Subsequent ERA Orders have also authorized imports at the $4.94 price.