

Cited as "1 ERA Para. 70,540"

Transcontinental Gas Pipe Line Corporation (ERA Docket No. 81-30-NG),
September 16, 1982

DOE/ERA Opinion and Order No. 46

Order Conditionally Authorizing Transcontinental Gas Pipe Line Corporation to Import Natural Gas
from Canada

[Opinion and Order]

I. Background

On July 17, 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 import up to a maximum amount of 75,000 Mcf per day of natural gas from Canada into the United States. The imported volumes are to be purchased from Sulpetro Limited (Sulpetro), with initial deliveries to begin on November 1, 1983.

Transco has had an ongoing gas purchase arrangement with Sulpetro. On July 7, 1980, the ERA issued DOE/ERA Opinion and Order No. 17 (Order 17) which granted Transco and Tennessee Gas Pipeline Company (Tennessee) authority to import jointly up to 75,000 Mcf of natural gas per day and 22,000,000 Mcf of natural gas per year from Sulpetro under a January 10, 1979 agreement (1979 Agreement) between Transco and Sulpetro which was later amended on October 19, 1979, to include Tennessee.^{1/} Order 17 authorized deliveries through November 1, 1982.

In DOE/ERA Opinion and Order No. 37 issued on November 25, 1981, the ERA authorized an application by Transco to extend until October 31, 1983, imports by Transco under the 1979 Agreement.^{2/} Tennessee, which was the purchaser and importer of one-half of the gas authorized in Order 17, as well as the transporter of the purchased gas, was not a party to Transco's application and thus was not authorized to continue importing gas under the 1979 Agreement after October 31, 1982. Transco was authorized to import that portion of the gas previously taken by Tennessee.

The basis for Transco's present application is a December 11, 1980, Gas Sale Contract (1980 Gas Sale Contract) between Sulpetro and Transco in which the firms agreed to continue the sale and purchase of natural gas for an eight

year period beginning on November 1, 1983, and ending on October 31, 1991. Under the terms of the 1980 Gas Sale Contract, Transco will receive up to 75,000 Mcf of gas per day during each contract year (November 1 through October 31) from November 1, 1983, through October 31, 1987. Over the remaining four contract years the Maximum Daily Volume to be imported will decrease each year by 15,000 Mcf per day with Transco scheduled to purchase up to 15,000 Mcf per day in the last year of the contract. The price of the gas will be U.S. \$4.94 per MMBtu, the currently authorized border price for natural gas imported from Canada. The Canadian National Energy Board (NEB) has not yet approved Sulpetro's proposed export to Transco.

According to the 1980 Gas Sale Contract, Transco is obligated to take, in any day, at least 50 percent of the Maximum Daily Volume in effect for the contract year. The contract further requires that Transco take or otherwise pay for a Minimum Annual Volume of gas equal to 75 percent of the Maximum Daily Volume in effect multiplied by the number of days in the particular contract year. However, the contract provides Transco with an opportunity to make up the volumes of gas which it has paid for but not taken (prepaid gas). Transco may recover prepaid gas in any succeeding contract year after taking the Minimum Annual Volume for the contract year. Upon the expiration of the term of the contract, Sulpetro will refund money paid by Transco for the gas which Transco is unable to take during the last four years of the contract term, less any transportation costs incurred by Sulpetro to have the gas available. The price that Transco will be required to pay for the gas under the take-or-pay provision is the weighted average price paid by Transco to Sulpetro for gas delivered during the contract year in which the obligation to prepay the gas is incurred.

Since the filing of its application there have been several changes to the project initially described by Transco. It was Transco's original intention to construct a new pipeline system (the Lake Erie Line) from Transco's existing pipeline facilities near Tamarack, Pennsylvania, to a point of interconnection with the facilities of Sulpetro's transporter of the gas, TransCanada Pipelines Limited (TransCanada), across Lake Erie. On June 16, 1982, Transco filed an amendment to its application stating that, because of engineering difficulties with the Lake Erie route, the pipeline would be rerouted to interconnect with TransCanada's facilities at the international border near Niagara Falls, New York. The proposed new system is now known as the Trans-Niagara Pipeline.^{3/} An application for authorization to construct and operate this pipeline is currently pending before the Federal Energy Regulatory Commission (FERC) in Docket No. CP82-125-003.

On July 14, 1982, Transco supplemented its application with a letter

stating that "the Trans-Niagara Pipeline is not expected to commence service before November 1, 1984." Transco indicates that during the time the new pipeline is being completed, Tennessee and, if needed, Consolidated Gas Supply Corporation (Consolidated) will transport the imported gas on their existing pipeline systems.

In its application, Transco asserts that its gas supply is being depleted and that it needs the additional gas to augment rapidly declining reserves. By letter dated April 1, 1982, the ERA requested additional information from Transco about its potential need for the gas. On May 5, 1982, in response, Transco filed a supplement to the original application. The supplement, which was served on all parties and is part of the record of this case, includes projections of Transco's total system requirements during the term of the proposed import and Transco's estimates of its supply capability.

In summary, Transco requests authority to import at a price of U.S. \$4.94 per MMBtu up to 75,000 Mcf per day from November 1, 1983, through October 31, 1987; 60,000 Mcf per day from November 1, 1987, through October 31, 1988; 45,000 Mcf per day from November 1, 1988, through October 31, 1989, 30,000 Mcf per day from November 1, 1989, through October 31, 1990; and 15,000 Mcf per day from November 1, 1990, through October 31, 1991. Transco anticipates that during the first contract year the gas will be delivered at a point near Niagara Falls, New York, and transported by Tennessee to Transco's pipeline system in New Jersey. Once the Trans-Niagara Pipeline is built and ready for service, presumably by November 1, 1984, the gas will be transported from the point of import at Niagara Falls, New York via the new pipeline to a point of interconnection with Transco's pipeline system in Pennsylvania.

II. Interveners and Comments

The ERA issued a notice of Transco's application on August 24, 1981.⁴ The notice invited protests or petitions to intervene, which were to be filed by September 17, 1981. The ERA has received nineteen (19) petitions to intervene.⁵ The petitions of Consolidated, Texas Eastern, Michigan Wisconsin Pipe Line Company, and Algonquin Gas Transmission Company were filed out-of-time. There is no opposition to any petition. We note that the late filings did not delay the proceeding, prejudice the rights of any of the parties thereto, or otherwise adversely affect the issuance of a decision in this docket. ERA will accept the late filings and grant intervention to all petitioners.

The ERA has not received any requests for a hearing nor does any intervener oppose the application. None of the intervenors has expressed an

opinion in 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.

Midwestern Gas Transmission Company, United Gas Pipeline Company, and Michigan Wisconsin Pipe Line Company do not oppose the application, but did indicate concern that approval of Transco's application might have an impact on future amounts of Canadian natural gas available for export.

In a recent Opinion and Order, No. 44 (Order 44), issued to Tennessee 6/ the ERA observed that the NEB is currently conducting proceedings to determine the amount of exportable surplus gas. Having determined that, the NEB will issue decisions concerning various requests for export licenses.

As indicated in Order 44, the ERA believes it would be inappropriate to engage in speculation with regard to the NEB's anticipated determination of the level of surplus gas available for export, or whether such levels will be adequate to satisfy all export license requests. Moreover, we cannot predict what actions the NEB might take with respect to individual applications for export licenses.

At the same time, the ERA wishes to emphasize that nothing in this decision should be construed as implying that the ERA has a preference for this import project over another or is issuing decisions in any preferential sequence. This order is issued at this time because we have determined that ERA Docket No. 81-30-NG is ripe for decision and because authorization of this import will not be inconsistent with the public interest. We intend to issue decisions in the other pending cases as they become ready for decision. The ERA does, of course, have authority to reopen this or any other proceeding should future action by the NEB make it appropriate to do so.

III. 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 FERC. Specifically, the 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 the FERC's.

The National Environmental Policy Act of 1969 (NEPA)^{9/} requires the ERA to give appropriate consideration to the environmental effects of its proposed actions, in this case, authorization to import natural gas. The FERC has the statutory responsibility to perform an environmental review before making its own decision on Transco's FERC section 3 application. It is appropriate, therefore, that the FERC should be the lead agency in terms of reviewing the environmental effects resulting from Transco's importation of the gas.

As previously explained, this proposed import involves two separate transportation arrangements. Under the first arrangement, gas delivered from November 1, 1983, until the initiation of service on the proposed Trans-Niagara Pipeline, expected to be in operation by November 1, 1984, will be transported by Tennessee and Consolidated through their existing U.S. pipeline facilities. Thereafter, transportation services will be provided through October 31, 1991, on the proposed Trans-Niagara Pipeline, the authorization of which is presently pending at the FERC.

Our approval of the import volumes to be transported through existing U.S. pipelines during the period prior to the start-up of the proposed Trans-Niagara Pipeline does not constitute a major federal action significantly affecting the human environment within the meaning of NEPA. No new construction is required for this service, and to the extent Tennessee provides transportation service during this period, this order merely continues an existing transportation arrangement between Tennessee and Transco. Our decision approving the import from November 1, 1983, to the time the Trans-Niagara Pipeline is ready for service, therefore, does not require an environmental impact statement or assessment. Accordingly, with respect to the gas Transco proposes to import during this period, our order in this proceeding is final.

With respect to our approval of volumes to be transported through the Trans-Niagara Pipeline during the period following its construction through October 31, 1991, we are issuing a conditional order based on our review of the record before us. When the FERC has completed its environmental review, we will complete our own environmental review based on the FERC's analysis, reconsider this opinion, and issue a final order. Our conditional decision indicates to the parties the ERA's determination on only the non-environmental issues in this proceeding with respect to the importation of volumes to be transported domestically through the Trans-Niagara Pipeline. Since this is not a final order with respect to these volumes, it does not jeopardize the environment or limit our alternatives in making a final decision on this

aspect of the application.

IV. 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. 0204-54.10/ Upon review of Transco's application and the rest of the record, the ERA has determined that the import will not be inconsistent with the public interest and the application should be approved for the following reasons.

A. Need.

Transco has submitted evidence, undisputed on the record, in support of its need for the gas it proposes to import. The record shows Transco faces the problem of a declining supply of natural gas from existing domestic sources. In its application, Transco indicates that it expects deliveries from presently committed domestic supply sources to decline from 680 Bcf in 1983 to 160 Bcf in 1991. Although new domestic supplies and currently authorized import projects are expected to increase the amount of gas available for Transco's system supply, the data provided by Transco indicate that its system nevertheless will experience a short-fall in meeting its high-priority customer's requirements after 1984.^{11/} The following table details Transco's gas supply projections and high-priority requirements for the period 1984 through 1991.^{12/}

	Projected High-Priority Requirements (Bcf)	Projected Supply 13/ (Bcf)	Difference Excess/ (Shortfall)	Year
1984	770	780	10	
1985	780	740	(20)	
1986	790	500	(90)	
1987	800	690	(110)	
1988	800	680	(120)	
1989	810	660	(150)	
1990	810	640	(170)	
1991	810	620	(190)	
	----- 6,370	----- 5,530	----- (840)	

Based on the data submitted by Transco, it would appear that even with the addition of the proposed import, which will range in annual volume from

about 27 Bcf in 1984 to 5 Bcf in 1991, Transco will be unable to meet the requirements of its high-priority users after 1985.

We also take note of the fact that, overall, Transco's contractual obligations to its customers are approximately 1,120f annually, which exacerbates the adverse impact of the projected short-fall in natural gas supplies.

In conducting its review of need for the gas, the ERA notes that several recent DOE studies ^{14/} indicate a long term decline in domestic production from conventional natural gas reserves. Furthermore, in Order 44, and in ERA's Opinion and Order of August 9, 1982, involving an import application by Boundary Gas Inc. (Boundary Gas),^{15/} the ERA Examined the issue of national need and determined that there will be a national need through the next decade for supplemental supplies of natural gas in addition to those expected to be produced from conventional domestic sources. This need for supplemental gas can be fulfilled in part by production from unconventional domestic sources as well as by the importation of reasonably priced natural gas from secure sources. As indicated in our recent Tennessee and Boundary Gas authorizations, the ERA has determined that, as long as Canadian imports are reasonably priced and Canada maintains its long term historical reliability as a supplier, Canadian imports can fulfill some of this need.

Accordingly, the ERA has determined that it will not be inconsistent with the public interest to allow Transco and its customers access to this available supply of natural gas.

B. Price.

In Opinion and Order NO. 29,^{16/} the ERA found that the present Canadian border price for natural gas exported to the United States of U.S. \$4.94 per MMBtu, requested by Transco in this application, was a reasonable price. This price has not been disputed on this record. Consequently, we find that the price for this import is reasonable.

C. Additional Conditions.

The ERA's concerns about increased U.S. reliance on Canadian natural gas and various related issues have been raised previously in consolidated ERA Docket Nos. 80-01-NG, et al., Inter-City Minnesota Pipelines Ltd., et al.^{17/} Because the ERA believes that such issues may be more appropriately considered in bilateral discussions with Canadian officials, it suspended final resolution of the consolidated dockets until after government-to-government

talks.18/ We therefore specifically reserve the right to take additional action in this docket that will parallel any future proceedings in ERA Docket No. 80-01-NG, and parties are hereby placed on notice that any conditions subsequently adopted may be retroactive to the date of approval of this import if necessary and appropriate in the circumstances.

In addition, the ERA notes that, with respect to gas transported through the proposed Trans-Niagara Pipeline on or after November 1, 1984, our authorization is conditional, pending the ERA's completion of its NEPA responsibilities following FERC's environmental review. With respect to the gas to be transported through Tennessee and Consolidated's existing pipeline facilities prior to completion of the Trans-Niagara Pipeline, our order is final, and authorizes continued transportation by this means after November 1, 1984, in the event the Trans-Niagara Pipeline is not completed by that date. Our authorization, however, is subject to the requirement that, if Transco makes arrangements to transport the gas by means of any domestic pipeline other than the existing facilities of Tennessee and Consolidated prior to commencement of service on the Trans-Niagara Pipeline, it must notify the ERA at least 60 days prior to the date it intends to initiate such transportation.

D. Conclusion.

Accordingly, the ERA has determined that approval of the present application to import Canadian natural gas from November 1, 1983, through October 31, 1991, at a price not to exceed U.S. \$4.94 per MMBtu, as requested by Transco, will not be inconsistent with the public interest within the meaning of Section 3 of the Natural Gas Act and should be approved.

V. Order

For the reasons set forth above, pursuant to section 3 of the Natural Gas Act, the ERA hereby orders that:

A. Transcontinental Gas Pipe Line Corporation (Transco) is authorized to import natural gas from Canada during the period beginning November 1, 1983, through October 31, 1991, in accordance with its Gas sale Contract of December 11, 1980, with Sulpetro Limited as follows:

November 1, 1983, through October 31, 1987--a maximum of 75,000 Mcf per day;

November 1, 1987, through October 31, 1988--a maximum of 60,000 Mcf per day;

November 1, 1988, through October 31, 1989--a maximum of 45,000 Mcf per day;

November 1, 1989, through October 31, 1990--a maximum of 30,000 Mcf per day;

November 1, 1990, through October 31, 1991--a maximum of 15,000 Mcf per day.

B. Transco is authorized to import the volumes of natural gas described in ordering paragraph A at a unit price not to exceed U.S. \$4.94 per MMBtu.

C. To the extent that the natural gas imported under ordering paragraph A is transported through the Trans-Niagara Pipeline, the authorization in that paragraph is conditioned upon entry of a final ERA Order after review by the DOE of the Federal Energy Regulatory Commission environmental analyses on this project, and upon completion by DOE of its NEPA responsibilities.

D. In the event that Transco intends to transport the gas authorized in ordering paragraph A by means of any domestic pipeline other than the existing pipeline facilities of Tennessee Gas Pipeline Company or Consolidated Gas Supply Corporation, it shall notify the Administrator of the ERA in writing at least sixty (60) days prior to initiation of transportation pursuant to such arrangements.

E. All petitions for leave to intervene, as set forth in this Order, are hereby granted, subject to such rules of practice and procedure as may be in effect, provided that participation of the 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 the ERA that they might be aggrieved because of an Order issued by the ERA in these proceedings.

F. The authorizations granted herein are subject to such conditions as may result from further proceedings in this case. The applicant and intervenors in this proceeding shall be bound by opinions and orders issued in further proceedings in this case.

G. The time for filing any application for rehearing of this Order shall run from the date of its issuance.

--Footnotes--

1/ See DOE/ERA Opinion and Order No. 17, issued July 7, 1980, in ERA Docket No. 79-08-NG, Transcontinental Gas Pipe Line Corporation and Tennessee Gas Pipeline Company (1 ERA Para. 70,512, Federal Energy Guidelines).

2/ See ERA Docket No. 81-26-NG (an unpublished Opinion and Order).

3/ The Trans-Niagara Pipeline will be owned by a general partnership rather than by Transco. The partners are Transco Canada Pipeline Company, an affiliate of Transco, Texas Eastern Niagara, Inc., an affiliate of Texas Eastern Transmission Corporation (Texas Eastern), and TransCanada PipeLines Niagara Ltd., an affiliate of TransCanada. Transco will operate and maintain the facilities. The Trans-Niagara Pipeline would also be used to transport natural gas in three other import projects currently pending before the ERA. See ERA Docket No. 81-29-NG, Transcontinental Gas Pipe Line Corporation, ERA Docket No. 81-07-NG, Texas Eastern Transmission Corporation, and ERA Docket No. 81-02-NG, Transcontinental Gas Pipe Line Corporation, Algonquin Gas Transmission Company, and Texas Eastern Transmission Company.

4/ 46 FR 44031 (September 2, 1981).

5/ Boundary Gas, Inc., The Brooklyn Union Gas Company, Carolina Pipeline Company, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, Midwestern Gas Transmission Company, Northern Natural Gas Company, Division of InterNorth, Inc., Philadelphia Gas Works, Piedmont Natural Gas Company, Inc., Public Service Electric and Gas Company, Sulpetro, Limited, Tennessee Gas Pipeline Company, a Division Tenneco Inc., TransCanada PipeLines Limited, United Gas Pipe Line Company, United Mid-Continent Pipeline Company, Consolidated Gas Supply Corporation, Texas Eastern Transmission Corporation, Michigan Wisconsin Pipe Line Company, Algonquin Gas Transmission Company.

6/ See DOE/ERA Opinion and Order No. 44, issued May 19, 1982, in ERA Docket No. 81-26-NG, Tennessee Gas Pipeline Company. (an unpublished Opinion and Order)

7/ DOE Delegation Order No. 0204-54, 44 FR 76735, October 2, 1979.

8/ DOE Delegation Order No. 0224-55, 44 FR 56736, October 2, 1979.

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

10/ See note 7, supra.

11/ High-priority users include firm residential, commercial, and

industrial customers.

12/ The source for this data is the graph included with Transco's May 7, 1982, supplement to its July 17, 1981 application in this docket. These volumes were extrapolated by the ERA from Transco's graph, and are approximations.

13/ These projections include committed conventional supplies, uncommitted conventional supplies, and existing ERA approved gas import projects. The gas supply in this authorization is not included.

14/ See, e.g., U.S. Department of Energy, Energy Information Administration, 1981 Annual Report to the Congress, February 1982, pg. 70; U.S. Department of Energy, Office of Policy, Planning and Analysis, Energy Projections to the Year 2000, July, 1981, pg. 6.2; U.S. Department of Energy, Office of Policy, Planning and Analysis, Two Market Analysis of Natural Gas Decontrol, November 1981, pp. 9, 14, 22.

15/ See DOE/ERA Opinion and Order No. 45, issued August 9, 1982, in ERA Docket No. 81-04-NG, Boundary Gas, Inc. (an unpublished Opinion and Order).

16/ In DOE/ERA Opinion and Order No. 29, issued March 27, 1981, in ERA Docket Nos. 81-09-NG, et al., Pacific Gas Transmission Co., et al. (1 ERA para. 70,528, Federal Energy Guidelines), the ERA found that the current border price of U.S. \$4.94 per MMBtu for Canadian natural gas was reasonable and not inconsistent with the public interest.

17/ See DOE/ERA Opinion and Order Nos. 14, issued February 16, 1980 (1 ERA Para. 70,502, Federal Energy Guidelines), 14A, issued April 1, 1980 (1 ERA Para. 70,507, Federal Energy Guidelines), 14B, issued May 15, 1981 (1 ERA Para. 70,508, Federal Energy Guidelines), and Prehearing Order, issued July 9, 1980 (1 ERA Para. 70,505, Federal Energy Guidelines).

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