

Cited as "1 ERA Para. 70,544"

Vermont Gas Systems, Incorporated (ERA Docket No. 81-33-NG), March 1, 1982

DOE/ERA Opinion and Order No. 39

Order Authorizing Increased Importation of Natural Gas from Canada

I. Background

On October 26, 1981, Vermont Gas Systems, Inc. (Vermont Gas) 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 2, 1981, in DOE/ERA Opinion and Order No. 34 (Order 34) in Docket No. 80-15-NG.1/ In that order, the ERA amended the previous import authority granted to Vermont Gas by the Federal Power Commission (FPC) on January 30, 1976, in FPC Docket No. CP76-100.2/ Order 34 increased the maximum daily import volume of Canadian natural gas that Vermont Gas was authorized to import from TransCanada PipeLines Limited (TransCanada) from 20,700 Mcf to 21,200 Mcf beginning November 1, 1981.3/ By its application, Vermont gas requests that the current import authorization be amended to permit it to increase gradually the maximum daily authorized volumes from 21,200 to 25,600 Mcf beginning November 1, 1982, until November 1, 1986, and to continue imports at this level through October 31, 1991.

Vermont Gas imports its total supply of natural gas from TransCanada under a Gas Purchase Contract dated February 16, 1966, as amended. The term of the contract extends through October 31, 1991. The gas is delivered at the international boundary near Highgate Springs, Vermont, and is sold and distributed entirely within the State of Vermont.

Vermont Gas will purchase the increased daily import volumes pursuant to the terms of a September 11, 1981, Agreement amending their February 16, 1966, Gas Purchase Contract with TransCanada. The Amended Agreement provides for the delivery and sale to Vermont Gas of the following daily volumes:

November 1 through October 31--Mcf/day

1982-83	1983-84	1984-85	1985-86	1986-91
22,400	23,200	24,000	24,800	25,600

Except for increasing the maximum daily volumes, the Amending Agreement does not change the terms and conditions of the contract with TransCanada. The price of the gas will be U.Q. \$4.94 per MMBtu, the currently authorized border price for natural gas imported from Canada. Vermont Gas incurs no take-or-pay obligation until it purchases volumes in excess of 10 Bcf of natural gas annually. Since the proposed imports will not exceed this amount, the take-or-pay provisions will not be invoked. The additional import volumes will be delivered through the existing pipeline facilities of TransCanada connected to Vermont Gas' facilities near Highgate Springs.

TransCanada is authorized to sell natural gas to Vermont Gas under Export License GL-19, as amended, which was granted by the National Energy Board of Canada (NEB) on October 11, 1965. During the term of the license, which expires on October 31, 1989, TransCanada is permitted to export an annual quantity not exceeding an average of 6.5 Bcf, and a total volume of 108 Bcf. On December 4, 1981, TransCanada filed a petition with the NEB to amend further License GL-19 to increase the maximum daily volumes of gas at issue here, although it did not request an extension of the term of the license in its petition. The NEB has not yet issued a final order on the petition.

In support of its application, Vermont Gas states that the requested increase in its current import level is not inconsistent with the public interest because the additional daily volumes of natural gas will be used to meet expected growth in market demand. Vermont Gas states that increasing the maximum daily volumes to be imported will not affect the total amount of gas which is authorized for export during the term of NEB License GL-19. Therefore, the gas required to meet the requested increase has already been reserved and dedicated for sale to Vermont Gas under the existing NEB authorization. Vermont Gas further submits that the proposed import volumes represent only a small portion of the total energy supply in the State of Vermont compared to petroleum which is the primary alternate fuel. In addition, the applicant points out that those additional volumes for which authorization is requested will not be subject to the take-or-pay obligations of the Gas Purchase Contract with TransCanada. Finally, Vermont Gas asserts that the application under consideration here is similar to its previous import application which was subsequently granted in Order 34.

## II. Intervenors and Comments

The ERA published a notice of receipt of Vermont Gas' application in the Federal Register on December 21, 1981.<sup>4</sup> The notice invited protests, comments, or petitions to intervene. The ERA has received petitions to intervene from the Vermont State Energy Office (VSEO), TransCanada, Northwest

Alaskan Pipeline Company (Northwest Alaskan), and Pacific Gas Transmission Company (PGT). A notice of intervention was filed by the Vermont Department of Public Service (VDPS). None of the intervenors requests a hearing.

None of the five petitions for intervention opposed the application. TransCanada, the VSEO, and VDPS expressed support for Vermont Gas' application. Both Northwest Alaskan and PGT stated as the basis for their petitions a general interest in ERA's consideration of Canadian natural gas import applications, but neither expressed an opinion on the merits of Vermont Gas' application. On February 1, 1982, Vermont Gas responded to Northwest Alaskan and PGT's petitions. Vermont Gas did not oppose either petition, but specifically sought to dispel any concern on the part of Northwest Alaskan or PGT that approval of its application might have an impact on future amounts of Canadian natural gas available for export. Specifically, Vermont Gas pointed out that approval of its request to increase its daily import authorization would not change the total export volume or the annual volume limitation previously imposed by the NEB over the term of License GL-19. In a statement filed February 9, 1982, in reply to Vermont Gas' February 1 comments, Northwest Alaskan renewed its request for intervention, and specifically stated that it does not oppose Vermont Gas' application.

Based on our review the petitions to intervene and the supplementary comments, we conclude that intervention should be granted to all petitioners for intervention in this docket.

### III. Decision

Vermont Gas' 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. 0204-54.5/ 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 authority to review and determine certain issues, including, but not limited to, need for the gas to be imported and the reasonableness of the proposed price to be charged for the import.

ERA has reviewed the record. We find that for the following reasons Vermont Gas' request to increase its maximum daily import volumes of natural gas is not inconsistent with the public interest and should be authorized.<sup>6/</sup>

With regard to the issue of the need for the gas, ERA believes that this relatively small increase in Vermont Gas' daily imports is justified. Vermont Gas previously has indicated that it has no practical means of obtaining

natural gas from domestic sources.<sup>7/</sup> Therefore, any increased demand for gas by Vermont Gas' customers must be met through increases in the amount of imported gas.

Previously, we have noted our concerns about increased reliance on Canadian natural gas in consolidated ERA Docket Nos. 80-01-NG, et al., Inter-City Minnesota Pipelines Ltd., Inc., et al.<sup>8/</sup> In these proceedings, we considered the extent of certain importers' (including Vermont Gas) dependence on Canadian natural gas, and the extent to which their service areas have access to alternate natural gas supplies. ERA determined that these and other issues raised in Docket Nos. 80-01-NG, et al, 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 the consolidated dockets pending those discussions.<sup>9/</sup>

In evaluating the request for import authorization presently before us, we note that Vermont Gas' reliance on imported natural gas will continue whether or not its current request is authorized. Furthermore, Vermont Gas' dependence would be virtually unchanged by the imports presently proposed because the volume of gas involved is very small. For these reasons the present proceeding does not raise additional concerns about dependency beyond those that are already before us in the suspended proceedings. In view of those circumstances, ERA has determined that any marginal increase in that dependence which would result from approval of the application is not in itself inconsistent with the public interest.

ERA has given considerable weight to the views of the VDPS, which has regulatory responsibility over the gas once it enters the country, and the VSEO, whose duties include monitoring energy resources and supplies. Because all the gas at issue will be sold and consumed within the State of Vermont, the VDPS and VSEO are clearly in a position to assess carefully the need for this gas as well as the possible risks associated with the State's total dependence on imported gas supplies. Both the TDPS and VSEO support Vermont Gas' application as a means of furthering their stated policy objective of reducing Vermont's reliance on imported oil.

In Order 34, ERA authorized Vermont Gas to import natural gas at the present Canadian Border price of \$4.94 per MMBtu.<sup>10/</sup> We continue that authorization in this docket. We note that Vermont Gas is effectively exempt from any take-or-pay obligation and that this contractual provision will not adversely affect the public interest.

Accordingly, the ERA has determined that approval of the present

application to permit Vermont Gas to increase its daily imports of Canadian natural gas during the term remaining under its Gas Purchase Contract 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 granted in Order 34 was conditioned 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 the other ongoing Canadian import proceedings cited previously. We continue to reserve the right to take additional action in this docket that will parallel any future proceedings in the consolidated Canadian import dockets.

The parties are advised 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, the ERA hereby orders that:

A. Pursuant to Section 3 of the Natural Gas Act, the Order of the Federal Power Commission, dated January 30, 1976, in its Docket No. CP 76-100 with respect to Vermont Gas Systems, Inc. (Vermont Gas), as amended by DOE/ERA Opinion and Order No. 34, (Order 34) is hereby further amended to authorize Vermont Gas to import natural gas from Canada during the period beginning November 1, 1982, through October 31, 1991, in accordance with the terms and conditions of its Gas Purchase Contract of February 16, 1966, as amended, with TransCanada PipeLines Limited as follows:

November 1, 1982 through October 31, 1983--22,400 Mcf per day;

November 1, 1983 through October 31, 1984--23,200 Mcf per day;

November 1, 1984 through October 31, 1985--24,000 Mcf per day;

November 1, 1985 through October 31, 1986--24,800 Mcf per day;

November 1, 1986 through October 31, 1991--25,600 Mcf per day.

B. Pursuant to Section 3 of the Natural Gas Act, 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 paragraph A, all other terms and conditions in Order 34 and in other outstanding orders authorizing Vermont Gas to import natural gas from Canada shall apply to the imports authorized herein.

D. The 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 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 an Order issued by ERA in these proceedings.

Issued in Washington, D.C. on March 1, 1982.

--Footnotes--

1/ DOE/ERA Opinion and Order No. 34, issued on July 2, 1981, in ERA Docket No. 80-15-NG, Vermont Gas Systems, Inc. (1 ERA Para. 70,534, Federal Energy Guidelines).

2/ Vermont Gas Systems, Inc., 55 FPC 445 (1976).

3/ The Federal Power Commission orders granting Vermont Gas import authorization, as well as Order 34, did not limit the duration of the import, nor prescribe maximum yearly volumes or the total amount of natural gas to be imported. The only volumetric provision established a maximum daily rate. See Vermont Gas Systems, Inc., 33 FPC 899 (1965); Vermont Gas Systems, Inc., 40 FPC 1521 (1968); VGS Corporation, 46 FPC 1217 (1971); Vermont Gas Systems, Inc., 55 FPC 445 (1976); and Order 34.

4/ 46 FR 61916 (December 21, 1981).

5/ 44 FR 56735 (October 2, 1979).

6/ DOE has determined that granting this authorization to import the requested volumes of natural gas 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.

7/ See prepared Direct Testimony of Raymond A. Ransom, dated August 22, 1980, submitted in ERA Docket Nos. 80-01-NG, et al., Inter-City Minnesota

Pipelines Ltd., Inc., et al., appended to Vermont's April 29, 1981, motion in ERA Docket No. 80-15-NG, supra.

8/ 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, 1980 (1 ERA Para. 70,508, Federal Energy Guidelines) and Prehearing Order, issued July 9, 1980 (1 ERA Para. 70,505, Federal Energy Guidelines).

9/ 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.

10/ 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), 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.

OFFICIAL SERVICE LIST  
VERMONT GAS SYSTEMS, INC.  
ERA DOCKET NO. 81-33-NG

APPLICANT

REPRESENTED BY

Vermont Gas Systems, Inc.            L. Julian Gaissert, President  
Vermont Gas Systems, Inc.  
P.O. Box 467  
Burlington, Vermont 05402

Stanley M. Morley, Esquire  
Joel F. Zipp, Esquire  
1700 K Street, N.W.  
Washington, D.C. 20006

INTERVENORS

Vermont Department of Public            Gerald R. Tarrant, Esquire  
Service                                        General Counsel  
Vermont Department of Public  
Service  
State Office Building

120 State Street  
Montpelier, Vermont 05602

Vermont State Energy Office      Margaret P. Garland, Director  
Vermont State Energy Office  
State Office Building  
120 State Street  
Montpelier, Vermont 05602

Pacific Gas Transmission      Peter W. Hanschen, General  
Company      Counsel  
Pacific Gas Transmission Company  
245 Market Street, Room 1422  
San Francisco, California 94105

TransCanada PipeLines Limited      J.W.S. McOuat, General Counsel  
TransCanada PipeLines Limited  
Commerce Court West  
Toronto, Ontario  
Canada M5L 1C2

Paul H. Keck  
Scott A. Harman  
Morgan, Lewis & Bockius  
1800 M Street, N.W.  
Washington, D.C. 20036

Northwest Alaskan Pipeline      Mr. Darrell B. MacKay  
Company      Sr. Vice President  
Northwest Alaskan Pipeline  
Company  
Suite S-700  
1120 20th Street, N.W.  
Washington, D.C. 20036

Mr. Cuba Wadlington, Jr.  
Director, Regulatory Affairs  
Northwest Alaskan Pipeline  
Company  
Suite S-700  
1120 20th Street, N.W.  
Washington, D.C. 20036

Mr. William J. Grealis  
Akin, Gump, Strauss, Hauer  
and Feld  
Suite 400  
1333 New Hampshire Avenue, N.W.  
Washington, D.C. 20036