Cited as "1 ERA Para. 70,552"

Northern Natural Gas Company, Division of InterNorth, Inc. (ERA Docket No. 82-09-NG), November 30, 1982

DOE/ERA Opinion and Order No. 48

Order Amending Authorization of Northern Natural Gas Company, Division of InterNorth, Inc. to Import Natural Gas from Canada

I. Background

On July 16, 1982, Northern Natural Gas Company, division of InterNorth, Inc. (Northern), 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 `y the ERA on August 29, 1980, in DOE/ERA Opinion and Order No. 19 (Order 19).1/ The proposed amendment would permit Northern to import a maximum daily volume mf 300,000 Mcf during the 1982-83 winter.

In Order 19 the ERA authorized Northern to import from Canada up to 200,000 Mcf of natural gas per day and up to 73,000,000 Mcf of natural gas per year through pipeline facilities near Emerson, Manitoba, for the period November 1, 1980, through October 31, 1981. For the period November 1, 1981, through October 31, 1987, Northern was authorized to import up to 200,000 Mcf per day and up to 73,000,000 Mcf per year at Emerson, minus whatever volumes Northern elected to import through pipeline facilities at Monchy, Saskatchewan, under a separate order issued by the Federal Energy Regulatory Commission (FERC) on June 27, 1980, in Docket Lo. CP80-22.2/

This gas is purchased from Consolidated Natural Gas Limited (Consolidated) under a Gas Sales Contract dated February 24, 1979, as amended (Gas Sales Contract).3/ It is transmitted to the Emerson delivery point by TransCanada PipeLines Limited. Great Lakes Transmission Company transports the gas imported at Emerson and delivers it to Northern near Carlton, Minnesota. The gas imported at Monchy is transported by Northern Border Pipeline Company (Northern Border) and delivered to Northern at Ventura, Iowa. The Gas Sales Contract contains a provision which obligates Consolidated to use its best efforts, upon Northern's request and as operational conditions permit, to make additional gas supplies available above the daily contract quantities.

Northern, in its application and in a September 22, 1982 motion for expedited consideration,4/ described the circumstances underlying its request for increased daily volumes. Northern asserts that, because of a temporary supply surplus, it reduced its takes of Canadian gas during the 1982 summer months and thus will likely be under its contract minimums for the current contract year by about 8 Bcf.5/ In its September 22, 1982 motion, Northern states:

> Northern's market demand has declined due to substantial fuel switching to coal, increased conservation efforts, competition from alternate fuels and the continuing economic recession. This decline in Northern's market demand has resulted in a short-term oversupply of natural gas deliverability on Northern's system, especially in the summer months (April through October), requiring substantial deficiency payments to be incurred to producers. The volumes of off-system sales [sales to new customers outside historical markets] that Northern anticipated making, pursuant to [Federal Energy Regulatory] Commission authorizations 6/ during the 1982 summer, were reduced substantially due to the depressed markets of the off-system sales purchasers, resulting in a greater disparity between summer and winter takes from producers.

Consequently, to enable it during the upcoming 1982-83 heating season (November 1 through March 31), to take the volumes for which deficiency payments have been made,7/ Northern requests an increase in its maximum daily import authorization at Emerson from 000,000 Mcf per day to 300,000 Mcf per day, less any volumes it imports at Monchy. In the present application, Northern does not request an increase in its currently authorized total annual volume of 73,000,000 Mcf, or any other change to its existing authorization. The price of the gas will be U.S. $4.94 per MMBtu, the current Canadian border price.8/ Furthermore, the import of such additional daily volumes will not require the installation of new pipeline facilities.

Northern currently has a related application pending at the FERC in Docket No. CP80-22-004 to increase the daily maximum volume of gas to be imported at Monchy from 100,000 Mcf to 200,000 Mcf. In no event would Northern's combined imports of gas at Emerson and Monchy exceed a total of 300,000 Mcf per day. On November 4, 1982, the National Energy Board of Canada (NEB) amended Consolidated's export license No. GL-61 9/ to increase the daily quantities of gas authorized to be sold to Northern at Emerson and Monchy during the period November 1, 1982, to October 31, 1983.

II. Interventions and Comments

The ERA issued a notice of receipt of Northern's application on September 23, 1982.10/ The notice required that protests or petitions to intervene be filed on an abbreviated time schedule, no later than October 14, 1982. The ERA has received nine timely petitions to intervene 11/ and one from Interstate Power Company (Interstate) which was filed out of time on October 25, 1982. Of those that filed timely petitions to intervene, two, Valero Transmission Company (Valero) and Delhi Gas Pipeline Corporation (Delhi), oppose the application. In addition, Valero requested a hearing.

Valero is an intrastate pipeline engaged in the transmission and sale of natural gas for resale within the State of Texas. Delhi is an intrastate pipeline which operates primarily in the States of Texas and Oklahoma. In their petitions, Valero and Delhi note that Northern is seeking blanket authorization in FERC Docket No. CP82-367-000 to make off-system sales in 1982 and 1983 to other interstate pipelines, intrastate pipelines and local distribution companies.12/ They object to Northern's request to import gas from Canada at $4.94 per MMBtu while at the same time Northern proposes to make off-system sales in their market area at a lower, rolled-in rate. Both Valero and Delhi contend that these lower prices give Northern a competitive advantage over intrastate pipelines. Valero further asserts that Northern's sale of Canadian gas at "subsidized prices" will lead to "usurpation" of Valero's markets. In addition, Valero and Delhi assert that Northern's application before the FERC for authorization to make off-system sales demonstrates that Northern has no need to import gas from Canada.13/

In its request for a hearing, Valero did not specify the issues it believes require a hearing. Based on the general concerns Valero sets forth, however, we believe its hearing request centers on two matters: Northern's off-system sales application at the FERC and the question of Northern's need for this gas.

The ERA has carefully reviewed Valero's request for a hearing and, for the following reasons, decided it should be denied, Most of the issues Valero and Delhi raised pertain to off-system sales and the impact of the Natural Gas Policy Act on sales of natural gas by intrastate pipelines. These issues, however, are primarily within the jurisdiction of the FERC and state regulatory agencies. The FERC is presently considering Northern's application for permission to make off-system sales in Docket No. CP82-367-000. We also note that all aspects of the off-system sales program are being generally reviewed by the FERC in a separate proceeding.14/ Valero and Delhi have intervened in both these proceedings. Accordingly, since the issue is before the FERC in two separate proceedings in which Valero and Delhi both are participants, denial of a hearing in this proceeding does not prevent Valero from being heard on its off-system sales concerns. In sum, as we said in our November 1, 1982 order extending the Canadian natural gas import authorizations of Midwestern Gas Transmission Company and Great Lakes Transmission Company,15/ we think the FERC proceedings are the appropriate places to address the off-system sales issue.

Second, as discussed earlier, Valero requests a hearing on the ground that Northern's request at the FERC for permission to make off-system sales indicates that it does not need this gas. We are not persuaded that this argument requires us to hold a hearing. In Order 19, the ERA found that Northern had made an adequate showing of need. In its present application, Northern merely requests that the ERA increase on a temporary basis its daily volume limitation to provide it needed flexibility in managing its gas supply. Northern does not seek an increase in the total volumes already authorized for importation. Northern's application would allow it to take gas at its request, as needed. In addition, Northern's request is limited solely to the present gas heating season, and thus will end next March 31. Increasing the maximum daily volume to be imported will enable Northern, for a limited term, to make up gas previously paid for and perhaps to avoid incurring additional take-or-pay obligations. Moreover, since the volumes for which authorization is requested will be imported on a best efforts basis, we expect that Northern would not ask Consolidated for more of this gas than it can sell. For the foregoing reasons, the ERA finds that Valero should not be granted a hearing on these issues.

With respect to Valero and Delhi's petitions for intervention, we have determined that, despite Northern's objections, these petitioners have shown an adequate basis for intervention and therefore should be admitted. We also have decided that Interstate should be granted intervention. Although Interstate filed out of time, we believe that good cause has been shown for permitting intervention of this public utility which is dependent on Northern for its supply of gas in several communities. In addition, granting Interstate's petition will not delay the proceeding or prejudice the rights of any party. Accordingly, this order grants all petitions for intervention in this docket.

III. Decision

Northern's application has been evaluated according to the standard established in section 3 of the Natural Gas Act, and the criteria set forth in DOE Delegation Order No. 0204-54.16/ Under section 3 of the Natural Gas Act, the ERA will grant an application unless it finds that the import will not be consistent 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 reasonableness of the proposed import price.

We have thoroughly reviewed the record in this proceeding, and have determined that approving Northern's request to increase its daily import authorization, on a temporary basis, is not inconsistent with the public interest. This decision rests primarily on our finding that increasing the daily volumes will enable Northern to minimize its take-or-pay costs by recovering prepaid gas and at the same time permit it operational flexibility to manage its overall gas supply. Our decision is based on the fact that the increased daily rate is being authorized for a relatively short term and on a best efforts basis, with no change in the total annual volume, import price, or term of the existing import authorization.

In DOE/ERA Opinion and Order No. 29, the ERA determined that the present border price of U.S. $4.94 per MMBtu requested in this application is a reasonable price compared to the cost of alternate fuels in U.S. markets.17/ No one has objected to that price in this proceeding. Consequently, we continue that authorization in this docket.

Accordingly, the ERA has determined that approval of Northern's application to increase its daily volume limitation to 300,000 Mcf per day at Emerson (less any volumes Northern imports at Monchy), at a unit price of U.S. $4.94 per MMBtu, during the forthcoming winter heating season is not inconsistent with the public interest within the meaning of section 3 of the Natural Gas Act, and should be granted.

IV. Additional Conditions

While approving Northern's import in Order 19, the ERA ordered further proceedings in the case which would parallel the proceedings in consolidated ERA Docket Nos. 80-01-NG, et al., Inter-City Minnesota Pipelines Ltd., Inc., et al.18/ In these proceedings we raised the question of increased U.S. dependence on natural gas imported from Canada and considered whether take-or-pay provisions should be limited to discourage possible uneconomic and unnecessary reliance on imported gas. Subsequently, the ERA determined that such issues may be more appropriately resolved in bilateral 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,19/ including Northern's case. We continue to reserve the right to take additional action in this docket that will parallel any future proceedings in ERA Docket No. 59-24-NG and the consolidated Canadian import dockets. The parties are hereby placed on notice that any conditions subsequently adopted, such as limiting the operation of the take-or-pay provisions, 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, pursuant to section 3 of the Natural Gas Act, the ERA hereby orders that:

A. The import authorization previously granted to Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), in Ordering Paragraph A of DOE/ERA Opinion and Order No. 19, issued on August 29, 1980, in ERA Docket No. 79-24-NG (Order 19), is hereby amended to permit Northern to import a daily volume of up to 300,000 Mcf during the period beginning with the date of issuance of this Order through March 31, 1983, through the existing point of interconnection of TransCanada PipeLines Limited and Great Lakes Transmission Company near Emerson, Manitoba, minus any volumes Northern elects to import through the facilities of Northern Border Pipeline Company at Monchy Saskatchewan.

B. Northern is authorized to import the volumes authorized in Ordering Paragraph A of this Order at a price not to exceed U.S. $4.94 per MMBtu (U.S. $4.60 per gigajoule).

C. Except as modified by Ordering Paragraph A of this Order, all other terms and conditions in Order 19 shall apply to imports authorized herein. In particular, nothing in this authorization shall be construed to alter the amount of the total annual volume of 73,000,000 Mcf authorized to be imported in Order 19.

D. All petitions for leave to intervene, as set forth in Appendix A, 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.

E. The request for hearing of Valero Transmission Company is here`y denied.

F. The authorization granted herein is 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.

Issued in Washington, D.C. on November 30, 1982.

--Footnotes--

1/ DOE/ERA Opinion and Order 19, issued on August 29, 1980, in ERA Docket No. 79-24-NG, Northern Natural Gas Company (1 ERA Para. 70,518, Federal Energy Guidelines).

2/ See FERC order issued on June 27, 1980, in Docket No. CP80-22. Northern Natural Gas Company, a Division of InterNorth, Inc., (11 FERC Para. 61,340, Federal Energy Guidelines). In DOE Delegation Order No. 0204-8 (42 FR 61,491, December 5, 1977), the Secretary of Energy delegated to the FERC authority under section 3 of the Natural Gas Act to approve importation of natural gas in conjunction with the construction of the Alaska Natural Gas Transportation System (ANGTS). The pipeline facilities at Monchy connect the Northern Border Pipeline segment of the ANGTS with pipelines in the United States.

3/ By an agreement dated May 13, 1982, Northern and Consolidated entered into an amending agreement to the Gas Sales Contract extending its term for an additional two years through October 31, 1989. The amending agreement also provides for an increase in the daily amount of gas Consolidated will sell and deliver to Northern over the final five years of the contract. On August 9, 1982, Northern filed an application with both the ERA and the FERC to extend its existing authorizations to import gas from Consolidated at Emerson and Monchy and to increase the quantities to be imported. See Northern Natural Gas Company, Division of InterNorth, Inc., in ERA Docket No. 82-11-NG and FERC Docket No. CP80-22-003.

4/On September 22, 1982, Northern filed a motion requesting the ERA to expedite its review of the application. Specifically, Northern requested approval of its application no later than November 1, 1982, in order to enable it to make up during the coming winter season deficiency volumes incurred this past summer.

5/ Subsection 3.01(b) of Article III of the Gas Sales Contract, requires Northern to take or otherwise pay for a "Minimum Annual Quantity" equal to 85 percent of the product of the daily contract quantity and the number of days in the contract year. Under an amending agreement dated October 29, 1980, the minimum take requirement was reduced to 75 percent of that product.

6/ Since March 16, 1981, the FERC has granted Northern nine Certificates of Public Convenience and Necessity to make off-system sales. See FERC Docket Nos. CP81-235-000, CP81-216-000, CP81-236-002, CP81-371-000, CP81-377-000, CP81/377-002, CP81-349-000, CP82-33-000, and CP81-361-000. As of June 30, 1982, Northern has actually delivered less than 10 percent of the volumes of gas that have been authorized for off-system sales. See Review of Off-System Sales Program; Informal Public Conference, 47 FR 37664 (August 26, 1982), at Table I.

7/ In a letter to the ERA and the FERC dated November 18, 1982, Northern stated that it paid Consolidated $16,589,826.00 for gas not taken during the 1981-82 contract year.

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 found that the new border price was reasonable and not inconsistent with the public interest and, therefore, authorized twelve U.S. importers, including Northern, to pay that price for Canadian natural gas.

9/ NEB Order No. AO-3-GL-61, November 4, 1982.

10/ 47 FR 42780, September 29, 1982.

11/ Petitions to intervene were received from the following: Great Lakes Transmission Company; Northern Illinois Gas Company; Boundary Gas Inc.; Delhi Gas Pipeline Corporation; Valero Transmission Corporation; Algonquin Gas Transmission Company; TransCanada PipeLines Limited; Panhandle Eastern Pipe Line Company; and Process Gas Consumers Group.

12/ See the FERC's notice of Northern's application in the Federal Register (47 FR 32581, July 28, 1982).

13/ On October 20, 1982, Northern filed answers opposing intervention by Delhi and Valero and requested the ERA to reject Valero's request for hearing. Northern asserts that Valero's and Delhi's concerns regarding its application to make off-system sales should be confined to the FERC's proceeding in Docket No. CP82-367-000. November 2, 1982, Delhi filed a response to Northern's answer alleging that importation of large volumes of high-priced Canadian gas would have an adverse impact on domestic natural gas exploration and development.

14/ On August 6, 1982, in Docket No. GP82-47-000 the FERC issued a notice announcing that in informal public conference would be convened to examine and evaluate the existing off-system sales program (47 FR 37664, August 26, 1982). That conference was held on November 4 and 5, 1982. both Valero and Delhi submitted written comments and made oral presentations.

15/ DOE/ERA Opinion and Order No. 47, issued on November 1, 1982, in ERA Docket No. 82-14-NG, Midwestern Gas Transmission Company, Great Lakes Transmission Company, mimeo at p. 4 (Opinion unpublished as of this date).

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

17/ See note 8, supra.

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

19/ 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.

APPENDIX A
OFFICIAL SERVICE LIST
NORTHERN NATURAL GAS COMPANY
82-09-NG

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