

Cited as "1 ERA Para. 70,567"

Midwestern Gas Transmission Company (ERA Docket No. 81-32-NG), July 12, 1984

DOE/ERA Opinion and Order No. 57

Order Conditionally Granting Amendments to Authorization to Import Natural Gas from Canada and Granting Interventions

I. Background

Midwestern Gas Transmission Company (Midwestern) is presently authorized to import up to 222,360 Mcf of natural gas per day and up to 74,000 MMcf of natural gas annually from Canada under Federal Power Commission Opinion and Order No. 469, issued August 10, 1965, which approved Midwestern's Contract No. 1 with TransCanada Pipelines Limited (TransCanada), Midwestern's sole supplier for its northern marketing area. The existing authorization and the underlying contract expire December 15, 1985. Midwestern also imports, under separate authorizations, lesser volumes of Canadian gas from TransCanada under Contract Nos. 2, 3 and 4 which extend further in time and involve different terms.

On August 31, 1981, Midwestern filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) pursuant to Section 3 of the Natural Gas Act, requesting an extension of its current authorization to import Canadian natural gas under Contract No. 1 through October 31, 1994.

On October 14, 1982, Midwestern filed an amendment to its application to reflect two changes in Contract No. 1 with TransCanada. One change added "annual averaging" provisions to conform to the Omnibus Proceeding Phase I Reasons For Decision announced by Canada's National Energy Board (NEB) on May 14, 1982. The other change extended the term of the contract from October 31, 1994, through October 31, 1999.

On February 21, 1984, Midwestern filed a second amendment conforming its application for import authorization to subsequently agreed to changes in its Contract Nos. 1, 2 and 3 with TransCanada and matching the provisions in TransCanada's new export License No. GL-89,1/ which extended the export authority only through October 31, 1992, at declining volumes. The second amendment requested authority to continue importing from Canada at a maximum daily rate of 222,360 Mcf through October 31, 1990, reduced to 148,518 Mcf for

the contract year commencing November 1, 1990, and 74,259 Mcf for the contract year commencing November 1, 1991. Make-up rights would extend for an additional year. The maximum annual contract quantity would be 74,000 MMcf through October 31, 1990; 49,284 MMcf from November 1, 1990, through October 31, 1991; and 24,644 MMcf from November 1, 1991, through October 31, 1992.

The proposed amendments to Contract No. 1 give Midwestern the right, subject to certain notice provisions, to reduce the daily contract quantity by as much as 51,945 Mcf effective November 1, 1984, 50,590 Mcf effective November 1, 1985, and up to the outstanding contract quantity effective December 15, 1985. By other contractual amendments, Midwestern reduced its current obligation to purchase minimum volumes from a minimum annual quantity equal to 75 percent of the daily contract quantity to 50 percent of the annual contract quantity for each of the three consecutive contract years ending October 31, 1985. Also, effective November 1, 1983, the payment obligation will be 50 percent of the minimum annual quantity at contract prices. Take-or-pay payments by Midwestern may be deferred for four years upon payment of interest on the amount due and it has make-up rights concerning the take-or-pay volumes of gas. These benefits to Midwestern and its customers can only become effective after governmental approval of the requested extension of Midwestern's import authorization.

On March 15, 1984, Midwestern filed a supplement to its amended application in response to the Secretary of Energy's new policy guidelines for natural gas imports.^{2/} Midwestern stated that the contract changes as described in its second amendment bring its import arrangement, except for the pricing provision, into compliance with the policy guidelines. Midwestern requested that the Administrator authorize the continued import of natural gas pursuant to Midwestern's amended application, conditioned upon the subsequent filing by Midwestern, before June 1, 1985, of an amendment to demonstrate that the arrangement is fully consistent with the new policy guidelines, and upon final approval by the Administrator of such amendment. No gas would flow under the new authorization until the final approval is granted.

In a second supplement filed on April 13, 1984, Midwestern pointed out that the latest amendments of the TransCanada-Midwestern contracts conform its import arrangement to the new policy guidelines. Midwestern cited the extended eight-year term as providing continuity and security of its gas supply, the rights to reduce contract quantities as providing flexibility to be responsive to system demands, and the changed take-or-pay obligations and better make-up provisions as providing some additional ability to be market competitive.^{3/}

Midwestern asserted that conditional approval of the application will result in immediate achievement of these take-or-pay reductions and other benefits for its customers on November 1, 1984, since the implementation of these changed contract provisions and continuing price negotiations are, according to the applicant, contingent upon approval by the Administrator of Midwestern's amended application.

II. Interventions and Comments

A. Introduction

Notice of Midwestern's initial application was published in the Federal Register on February 8, 1982.⁴ Protests or petitions to intervene were to be filed no later than March 10, 1982. Notice of its first amendment was published on December 8, 1982, providing a protest and intervention period ending January 7, 1983.⁵ Notice of the second amendment and the two supplements was published on May 17, 1984, providing a protest and intervention period that ended June 18, 1984.⁶ Twenty-two timely and two late petitions (Pacific Gas Transmission Company and the City of Grand Forks, North Dakota) to intervene were received in response to the first two notices. These are identified in appendix A. There were no petitions to intervene in response to the most recent notice. While nearly all the petitions to intervene raised some issue related to the proposed import amendment, only Valero Transmission Company (VTC), a Texas intrastate pipeline, opposed the application and requested a hearing. Midwestern filed an answer to VTC's petition requesting that the petition be denied because the off-system sales issue raised by VTC had recently been fully addressed and disposed of by the ERA in Opinion and Order No. 47 issued to Midwestern and Great Lakes Gas Transmission Company (Great Lakes),⁷ as well as by the Federal Energy Regulatory Commission (FERC) in separate proceedings.

The late filings will not delay the proceeding or prejudice the rights of any party. Accordingly, the late filings are accepted, and this order grants intervention to all petitioners.

B. VTC's Request

In its petition for intervention in this proceeding, VTC objected to Midwestern's amended request for extension of its authority to import Canadian gas to the extent that it would result in gas being made available in VTC's market at low prices by Midwestern's resale customer, ANR Pipeline Company (ANR) (formerly Michigan Wisconsin Pipe Line Company), if ANR's off-system sales application before the Federal Energy Regulatory Commission (FERC)

were approved.^{8/} Under these circumstances, VTC argued, there would be no need for these imported supplies. VTC contended that it and its customers would be adversely affected if Canadian gas displaced its sales in Texas because it would have to "shut-in" its connected gas supplies. VTC asserted that such action would hinder its suppliers' ability to acquire reserves, drive up costs to its customers and cause reduced payments to its suppliers that would adversely affect their financial integrity. VTC claimed that if the FERC were to grant ANR's request for authority to make off-system sales, such sales could be made to VTC's market area at lower, rolled-in rates. VTC contended that these lower prices would give ANR a competitive advantage over intrastate pipelines and result in displacing VTC sales. VTC contended that any extension of Midwestern's authorization would cause adverse and anticompetitive results.

VTC's hearing request centered on the ANR off-system sales application at the FERC and the question of Midwestern's need for this gas. VTC's objections and request for a hearing have been carefully reviewed, with the result that the hearing request is denied. The issues VTC raised relate to off-system sales and the impact of the natural Gas Policy Act on sales of natural gas by intrastate pipelines. ERA Order No. 47, which extended the import authorizations of Midwestern and Great Lakes, stated that the FERC was the appropriate place to address these issues. In its Order issued December 27, 1982, the FERC denied VTC's similar request for a hearing on this matter in the companion FERC import proceeding^{9/} and directed VTC to the FERC proceedings directly concerning off-system sales.^{10/} The pending ANR request for blanket off-system sales authority at the FERC is the proper proceeding in which VTC should address this issue.

All parties will have an opportunity to comment on the whole import arrangement, including need and competitiveness, when Midwestern submits its later amendment.

C. Northern States Power Companies of Minnesota and Wisconsin--Joint Petition (Northern States)

In its petition to intervene, Northern States raised the issue of preference of one importer over another to get Canadian gas in the event the Canadian NEB should decide to limit the total amount of gas available for export to less than the contract quantity. Similar concerns were reflected in petitions filed by other intervenors. This concern was addressed in previous opinions,^{11/} which stated that speculation with respect to future NEB determinations was inappropriate and that the Administrator's decisions would be made in pending cases when they were ready for decision. However, the

issue raised by Northern States is now moot since the NEB issued its Phase III decision in January 1983, thus resolving any question of preference or availability.

D. North Dakota Public Service Commission (NDPSC)

In reference to Midwestern's service to distributors in North Dakota, the NDPSC, in its petition to intervene, briefly focused on Midwestern's dependence upon Canadian gas. NDPSC did not oppose Midwestern's application, but stated that the ERA, in DOE/ERA Docket No. 80-06-NG, requested Midwestern to comment in further proceedings on six questions related to the competitiveness of Canadian gas and its dependence on that gas in its Northern System service area.^{12/} Subsequently, further consideration of the issues raised in Docket No. 80-06-NG was suspended. On February 16, 1984, with the implementation of the new policy guidelines,^{13/} the suspended proceedings were ordered terminated.

E. St. Onge

Petitions filed by Daniel and Caroline St. Onge, the City of Moorehead, Minnesota, the City of Fargo, North Dakota, and the City of Grand Forks, North Dakota (St. Onge, et al.), consumers of Midwestern's supply, supported Midwestern's application, but expressed concern regarding the terms of the existing contracts between intervenor Northern States and Midwestern. St. Onge, et al., requested the ERA to condition the authorization to direct revision of the contractual provisions between Midwestern, Northern States, and its customers to require the purchasing utility to roll in the cost of Canadian gas with the cost of other gas supplies.

Northern States, North Central Public Service Company, Division of Donovan Companies, Inc. (North Central), and Midwestern opposed the St. Onge, et al., petition to intervene. The Administrator previously ruled on these issues on Order 14B,^{14/} where these matters were found beyond the scope of its proceeding and that the agency did not have jurisdiction to provide the relief requested. No reason has been found to change that position in this case. Further, Midwestern, in its second amendment, indicated that, under a settlement agreement in a proceeding pending before the FERC (Docket RP83-73), Midwestern proposed to end its sales to Northern States. The FERC approved the settlement on June 1, 1984.^{15/} This action effectively makes the issue moot.

III. Decision

Midwestern's application has been evaluated under Section 3 of the

Natural Gas Act and the Secretary of Energy's new natural gas import policy guidelines. Under Section 3 of the Natural Gas Act, the Administrator must determine whether an import is not inconsistent with the public interest. The policy guidelines assert that natural gas imported under agreements that provide for the sale of gas in volumes and at prices responsive to market demands largely meets the public interest criteria. Specifically, the guidelines state that the contract arrangement must be sufficiently flexible to permit pricing and volume adjustments, as required by market conditions and available competing fuels.

After evaluating Midwestern's application, its amendments and supplements, and taking into consideration all comments and interventions filed, it has been determined that the amended import arrangement complies with the policy guidelines in part, and to that extent granting a conditional authorization is not inconsistent with the public interest. Midwestern has negotiated a number of contractual improvements in its import arrangement which make it more flexible and therefore more competitive.

Under the amendments, Midwestern will be able to reduce contract volumes to respond to market conditions during the term of the import authorization. Further, it has negotiated a reduction in its minimum volume and take-or-pay obligations. Although the pricing terms have not yet been demonstrated to be competitive, they are the subject of continuing negotiation. B requesting conditional authorization subject to a showing by June 1, 1985, that the pricing terms are competitive, Midwestern has indicated that it is making a good faith effort to make its import arrangement competitive as set forth in the policy guidelines.

In summation, I find that the Midwestern application should be granted, subject to the condition that by June 1, 1985, Midwestern submit to the ERA for review and approval an amendment demonstrating that the import arrangement is competitive and not inconsistent with the public interest.

Order

For the reasons set forth above, pursuant to Section 3 of the Natural Gas Act, it is ordered that:

A. The import authorization previously issued by the Federal Power Commission to Midwestern Gas Transmission Company (Midwestern) under consolidated Docket Nos. G-18313, G-18314, G-18315, and G-18316 on October 31, 1959 (22 FPC 775), is hereby amended to extend the authorization to October 31, 1992. Additional authority is granted, commencing on November 1, 1992, and

ending on October 31, 1993, to import quantities of gas paid for but not taken during the term of this authorization.

B. The authorization issued to Midwestern under Docket No. G-18314, on August 10, 1965 (34 FPC 457), is hereby amended to permit Midwestern to import from Canada a maximum of 222,360 Mcf per day through October 31, 1990; a maximum of 148,518 Mcf per day for contract year commencing November 1, 1990, and a maximum of 74,259 Mcf per day for contract year commencing November 1, 1991, in accordance with the provisions of its Contract No. 1, as amended. The maximum annual contract quantity shall be 74,000 MMcf through October 31, 1990, 49,284 MMcf from November 1, 1990, through October 31, 1991, and 245,644 MMcf from November 1, 1991, through October 31, 1992.

C. The amendments set forth in ordering paragraphs A and B above are conditioned on the filing with the ERA by Midwestern before June 1, 1985, of an amendment demonstrating that the import arrangement is competitive and not inconsistent with the public interest and upon final approval by the Administrator of such amendment. The amendments in A and B become effective upon such final approval.

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 procedures 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 not herein specifically denied, and that the admission of such intervenors shall not be construed as recognition that they might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., on July 12, 1984.

--Footnotes--

1/ The NEB Omnibus Export Decision of January 27, 1983, authorized TransCanada under License No. GL-89 to export to Midwestern natural gas pursuant to Contract No. 1 at a maximum daily rate of 223,000 Mcf from November 1, 1984, until October 31, 1990; 148,518 Mcf for the contract year ending October 31, 1991; and 74,259 Mcf for the contract year ending October 31, 1992. Delivery of make-up volumes is allowed for an additional year.

2/ 49 FR 6684, February 22, 1984.

3/ Id.

4/ 47 FR 5757, February 8, 1982.

5/ 47 FR 55268, December 8, 1982.

6/ 49 FR 20892, May 17, 1984.

7/ DOE/ERA Opinion and Order No. 47, issued November 1, 1982, in ERA Docket No. 82-14-NG, Midwestern Gas Transmission Company, Great Lakes Gas Transmission Company (1 ERA Para. 70,541, Federal Energy Guidelines).

8/ Abbreviated Application of Michigan Wisconsin Pipe Line Company for a Certificate of Public Convenience and Necessity, filed April 6, 1982, FERC Docket No. CP82-275-000.

9/ 21 FERC Para. 61,330 (1982).

10/ FERC Docket Nos. CP82-367-000, CP82-544-000 and CP82-468-000.

11/ E.g., DOE/ERA Opinion and Order No. 44, issued May 19, 1982, in ERA Docket No. 81-24-NG, Tennessee Gas Pipeline Company (1 ERA Para. 70,549, Federal Energy Guidelines).

12/ 1 ERA Para. 70,508, Federal Energy Guidelines.

13/ 49 FR 6691, February 22, 1984.

14/ DOE/ERA Opinion and Order No. 14B issued May 15, 1980, in ERA Docket No. 80-01-NG, et al. (1 ERA Para. 70,508, Federal Energy Guidelines).

15/ 27 FERC Para. 61,336.

Appendix A

Intervenors:

Northern States Power (Minnesota)
Northern States Power (Wisconsin)-Joint Petition
Inter-City Gas Corporation
Michigan Wisconsin Pipe Line Company
Algonquin Gas Transmission Company
North Central Public Service Company, Division of Donovan Companies, Inc.
The Peoples Gas Light and Coke Company
Boundary Gas, Inc.

Natural Gas Pipeline Company of America
Transcontinental Gas Pipe Line Corporation
Wisconsin Gas Company
Daniel St. Onge and Caroline St. Onge
North Dakota Public Service Commission
City of Grand Forks, North Dakota
City of Moorhead, Minnesota
City of Fargo, North Dakota
United Mid-Continent Pipeline Company
United Gas Pipe Line Company
Panhandle Eastern Pipeline Company
Northern Natural Gas Company, Division of InterNorth, Inc.
TransCanada PipeLines Limited
Northwest Alaskan Pipeline Company
Pacific Gas Transmission Company
Process Gas Consumers Group
Valero Transmission Company