

Cited as "1 ERA Para. 70,569"

Tennessee Gas Pipeline Company (ERA Docket No. 82-18-NG), September 4, 1984.

DOE/ERA Opinion and Order No. 59

Order Authorizing Importation of Natural Gas from Canada and Approving Place of Importation

I. Project Description

On November 22, 1982, Tennessee Gas Pipeline Company (Tennessee) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act, for authorization to import into the United States from Canada up to 84,000 Mcf per day of natural gas to be supplied by Canadian-Montana Pipe Line Company (Canadian-Montana). The purpose was to provide natural gas during the interim period until a decision is made on another import application Tennessee filed on August 10, 1982, in Docket No. 82-10-NG. In that docket, Tennessee requested authorization to import a total quantity of up to 209,000 Mcf per day of Canadian natural gas to be purchased under individual contracts from Canadian-Montana and KannGaz Producers, Ltd. through October 31, 2000, utilizing facilities yet to be constructed.^{1/}

In its present application, Tennessee requested authorization to import gas to be purchased from Canadian-Montana under a Gas Purchase Agreement dated November 3, 1982. The agreement provides for delivery of the gas either at an existing point of interconnection between the facilities of Tennessee and TransCanada PipeLines, Ltd. (TransCanada) near Niagara Falls, New York, or, at Tennessee's request, at the interconnection of TransCanada and another interstate pipeline system near Emerson, Manitoba. In addition, Tennessee stated that the gas will be offered by Canadian-Montana and received by Tennessee strictly on an interruptible basis, and the agreement does not obligate Tennessee to take or Canadian-Montana to provide volumes during the interim period. Under the terms of the contract, the price of the import would currently be \$4.40 per MMBtu.

Tennessee stated that Canadian-Montana has already received export authorization from the Canadian National Energy Board for the gas it proposes to import.

In support of its application, Tennessee asserted that having this supply

of gas available on a best efforts basis will provide it flexibility to meet potentially heavy winter demand or emergency conditions which might impair its system operations. Tennessee further stated that the proposed import will not impair its ability to render authorized natural gas service at reasonable rates, and that therefore it will not be inconsistent with the public interest.

II. Procedural Background

Notice of Tennessee's application was issued on January 12, 1983, inviting protests or petitions to intervene.^{2/} The ERA received 15 petitions to intervene and one public service commission notice of intervention.^{3/} The New England Fuel Institute (NEFI), an association of small and independent home heating oil distributors in New England, is the only intervenor who objected to the proposed import. NEFI requested a trial-type hearing for the purpose of developing various issues.

On February 15, 1984, the Secretary of Energy issued new policy guidelines for the importation of natural gas, along with revised delegation orders to the Administrator of the ERA.^{4/} The objective of the new policy was to establish gas trade on a competitive and market-responsive basis. As a first step in implementing the new policy, the Administrator issued a procedural order on February 16, 1984, setting forth certain reporting and other requirements for all importers, including Tennessee.^{5/}

In accordance with that order, Tennessee supplemented its application in this docket on April 18, 1984. In its supplement, Tennessee stated that because its gas purchase agreement with Canadian-Montana requires modification to meet the policy guidelines, it would renegotiate the contract and either supplement or amend its application upon completion of those negotiations. Under the new policies announced by the Secretary of Energy and the Government of Canada, importers and exporters of Canadian gas are free to negotiate their own contract terms, including price. Tennessee again pointed out that having the supply of gas available on a best efforts basis will provide flexibility to meet potentially heavy winter demand or emergency conditions which might impair its system operations. Because Tennessee believes the interim imports will provide a valuable interim service prior to initiation of long-term service, it requested that the import be authorized without awaiting contract renegotiations.

On July 5, 1984, an order was issued granting all petitions to intervene and giving the parties the opportunity to submit modifications to their positions on Tennessee's application by August 6, 1984, and notwithstanding any requests which had been previously made, to request additional procedures

in this case.^{6/} Parties wishing to respond to the comments were to reply by August 21, 1984. In the order it was indicated that analysis of the application led to a preliminary finding that Tennessee's gas purchase contract is sufficiently flexible to respond to changing market conditions, and that unless proven otherwise, the proposed import would be authorized.

Only Transcontinental Gas Pipe Line Corporation (Transco) and NEFI filed comments pursuant to the July 5 order; neither asked for additional procedures. While Transco stated it did not oppose the application, it did express concern as a transportation customer of Tennessee that approval of the application might impair Tennessee's ability to deliver Transco's own Canadian import volumes purchased from Sulpetro Limited because of insufficient pipeline capacity. Transco requested the ERA to condition the authorization in any order approving the application so that, if insufficient capacity exists, interruptible import arrangements would be given a lesser priority than firm import arrangements.

NEFI asserted that the ERA is without legal authority to approve the import because Tennessee has stated that its gas purchase contract does not conform to the Secretary's policy guidelines. In addition, NEFI contended that this Canadian gas is not competitive with domestic supplies because abundant domestic gas is available at prices well below the price of the proposed import. Moreover, NEFI claimed that authorization of these additional imports will exacerbate the current domestic gas surplus and its attendant take-or-pay liabilities. In conclusion, NEFI urged that if the ERA nevertheless approves the application, it limit the scope of any approval to short-term, best efforts arrangements that contain no minimum purchase obligation.

In response to Transco's request that the ERA condition approval of the import to require Tennessee to render priority delivery service to Transco, the applicant asserted the ERA does not have any authority under Section 7 of the Natural Gas Act to regulate imported gas within the domestic natural gas system. Tennessee, in rebuttal of NEFI's claim that the import does not meet the marketability test of the Secretary's import guidelines, noted the gas has no take-or-pay requirements and therefore other cheaper sources would be used should they become available.

III. Decision

Tennessee's application has been evaluated according to the statutory requirements of Section 3 of the Natural Gas Act, the authority delegated to the Administrator of ERA pursuant to Delegation Order No. 0204-111 (49 FR 6690, February 22, 1984), and the Secretary of Energy's gas import policy

guidelines. Under Section 3 of the Natural Gas Act, it must be determined whether an import is not inconsistent with the public interest. Under the policy guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

No single element of an import arrangement determines its competitiveness. Rather, each arrangement is considered in its entirety. Here, the applicant will incur no take-or-pay or minimum bill obligations in connection with this import. The volumes will be imported on a short-term interruptible basis, and only to the extent that Tennessee needs such gas. This flexibility will ensure that the gas will only be imported when the price is competitive. The availability of gas to Tennessee under this arrangement will provide flexibility to meet peaking and seasonal needs of its customers. Finally, the requested import involves only existing transmission facilities.^{7/}

This import arrangement, on balance, is reasonable and thus complies with the policy guidelines. Even though different pricing terms may be negotiated, Tennessee has satisfactorily demonstrated that its present purchase arrangement is sufficiently flexible, when viewed as a whole, to enable it to respond to its markets.

With respect to Transco's recommendation that Tennessee be required to subordinate its interruptible service to Transco's firm service obligations during periods of capacity constraint on Tennessee's pipeline, it is noted that this proceeding is not an appropriate forum for addressing this issue. Transportation of natural gas in interstate commerce is subject to the jurisdiction of the Federal Energy Regulatory Commission.

After taking into consideration all information in the record of this proceeding, I therefore find that approving this import as requested by Tennessee is not inconsistent with the public interest and approval should be granted.

Order

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

A. Tennessee Gas Pipeline Company (Tennessee) is authorized to import at Niagara Falls, New York, or Emerson, Manitoba, a daily volume of up to 84,000 Mcf of natural gas from Canada in accordance with the terms and conditions of Tennessee's November 3, 1982, Gas Purchase Agreement with Canadian-Montana Pipe Line Company.

B. Tennessee is authorized to import these volumes of natural gas for a period from the date deliveries commence until a final decision is made on Tennessee's import application filed in ERA Docket No. 82-10-NG.

C. This natural gas may be imported at a unit price not to exceed U.S. \$4.40 per MMBtu.

Issued in Washington, D.C., on September 4, 1984.

--Footnotes--

1/ 47 FR 44135, October 6, 1982, and 48 FR 29042, June 24, 1983.

2/ 48 FR 2174, January 18, 1983.

3/ The intervenors are:

- (1) TransCanada PipeLines Limited
- (2) Long Island Lighting Company
- (3) Texas Eastern Transmission Corporation
- (4) National Fuel Gas Supply Corporation
- (5) Public Service Commission of West Virginia
- (6) Algonquin Gas Transmission Company
- (7) Columbia Gas Transmission Corporation
- (8) Consolidated Edison Company of New York, Inc.
- (9) New England Fuel Institute
- (10) Northern Natural Gas Company, Division of InterNorth, Inc.
- (11) United Gas Pipe Line Company
- (12) United Mid-Continent Pipeline Company
- (13) Pacific Gas Transmission Company

(14) Transcontinental Gas Pipe Line Corp.

(15) The Brooklyn Union Gas Company

(16) New England Customer Group: The Berkshire Gas Company, Blackstone Gas Company, Boston Gas Company, Colonial Gas Company, Commonwealth Gas Company, Concord Natural Gas Corporation, The Connecticut Light & Power Company, Connecticut Natural Gas Corporation, Essex County Gas Company, Fitchburg Gas and Electric Light Company, Gas Service, Inc., Granite State Gas Transmission, Inc., City of Holyoke, Massachusetts Gas and Electric Department, Manchester Gas Company, The Southern Connecticut Gas Company, Valley Gas Company, City of Westfield Gas and Electric Light Department.

4/ 49 FR 6684, February 22, 1984.

5/ 49 FR 6691, February 22, 1984.

6/ ERA Para. 70,565, Federal Energy Guidelines.

7/ Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application is not a Federal action significantly affecting the quality of the environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, et seq.) and therefore an environmental impact statement or environmental assessment is not required.