

Cited as "1 ERA Para. 70,574"

Pacific Gas Transmission Company (ERA Docket No. 82-16-NG), November 1, 1984

DOE/ERA Opinion and Order No. 63

Conditional Order Granting Amendments to Authorization to Import Natural Gas From Canada

### I. Background

The Pacific Gas Transmission Company (PGT) is currently authorized to import up to 1023 MMcf per day of Canadian natural gas from Alberta and Southern Gas Company, Ltd. (Alberta and Southern), on an average daily basis, and an annual contract quantity of 373, 500 MMcf through October 31, 1985. Thereafter, authorized volumes begin to decline and expire completely on October 31, 1993.<sup>1/</sup>

On October 28, 1982, PGT filed two applications with the Economic Regulatory Administration (ERA) to amend its authorization to permit PGT to continue to import natural gas at its currently authorized level of 1023 MMcf per day through October 31, 2000. On June 7, 1983, PGT amended these applications to change the proposed ending date from October 31, 2000, to October 31, 1993.<sup>2/</sup> The change corresponds to the period that Alberta and Southern is authorized to export natural gas by the Canadian National Energy Board (NEB).<sup>3/</sup> This request represents a total increase in authorized volumes of 1.9 Tcf. On July 13, 1983, the ERA consolidated PGT's two applications into this docket, ERA 82-16-NG.<sup>4/</sup>

In support of its request, PGT stated that all the additional natural gas it is seeking to import would be sold to its parent company, the Pacific Gas and Electric Company (PG&E), to permit PG&E to continue to provide reliable service to gas customers in northern and central California. PGT asserted that continued access to Canadian natural gas supplies would assure the adequacy of future gas supplies to PGT's California market. As an indication of the reliability of the Canadian gas supply, PGT noted that the import has never been curtailed or cut back since it began more than 20 years ago. PGT requested expedited consideration of its application inasmuch as the NEB export authorization granted to Alberta and Southern in January 1983 is conditioned upon receipt of proof by January 31, 1985, of ERA's import authorization for the additional volumes.

In an April 15, 1984, supplemental filing in response to the Secretary of Energy's new policy guidelines for natural gas imports,<sup>5</sup> PGT requested a conditional authorization, subject to completion of negotiations with its supplier on pricing and minimum purchase terms for the incremental volumes. The company proposed to make a showing prior to November 1, 1985, the start-up date for the flow of the incremental volumes, that the import arrangement is in full compliance with the policy guidelines. PGT asserted that such a conditional authorization would provide the assurance that it seeks of the future availability of gas supplies to serve its California market.

PGT noted that a Canadian gas price competitive with available fuels in northern and central California for periods beginning after the then-scheduled end of the Canadian Volume Related Incentive Pricing (VRIP) program on October 31, 1984, could only be negotiated once changes in the Canadian gas export pricing policy were accomplished.

In its April 15, 1984, supplement, PGT cited the reductions in its minimum purchase obligations that it had negotiated with Alberta and Southern effective January 1, 1984, of the period January 1, 1984, through June 30, 1984, as evidence that it would be able to accomplish the changes needed in volume purchase terms to meet the competitiveness criteria in the policy guidelines. Under these reductions, PGT's minimum purchase levels were reduced to an annual take-or-pay level based on 60 percent of the daily contract quantity, an annual minimum purchase obligation of 40 percent of daily contract quantity, and no monthly minimum obligation.

On August 3, 1984, PGT indicated in comments submitted jointly with PG&E in this docket that the new Canadian pricing policy announced by the Canadian Government on July 13, 1984, paved the way for attainment of a competitive Canadian natural gas price. PGT stated that it intended to file a modified price for currently authorized imports that would be competitive in its market area, which it did on October 1, 1984. In that same filing, PGT stated that a separate filing would be made in this docket at an appropriate future date to incorporate the revised import terms into its pending application.

Under the original gas sale contract between PGT and Alberta and Southern, PGT was required to take or pay for 90 percent of the contract quantity of natural gas on an annual basis, and to physically take not less than 80 percent of contract quantity on a monthly basis or 75 percent of contract quantity on a daily basis. As a result of amendments to this contract in March 1981 and in June 1982, the daily contract quantity was

reduced from 1023 MMcf of natural gas to 869.79 MMcf of natural gas, effective July 1, 1980, through June 30, 1984, thereby reducing PGT's minimum purchase requirements by about 15 percent for that period. Under the contract as amended, PGT may recover take-or-pay gas during any contract year by taking delivery of additional volumes over and above the required minimum average daily volume but not in excess of daily maximum volumes.

In its October 1, 1984, information filing, concerning its existing authorization, PGT submitted an amendment to its existing gas sale contract with Alberta and Southern reducing the price for Canadian natural gas which PGT is currently authorized to import, and superseding the volume revisions contained in the January 1, 1984, changes. The amendment is effective November 1, 1984, for currently authorized volumes. It provides for a commodity rate at the international border of \$2.99 (U.S.) per MMBtu which is subject to semi-annual review and adjustment, plus a demand charge based on actually incurred costs of transportation and shipping within Canada to the export point. This price structure is currently projected to result in an average delivered price at the California border of \$3.63 (U.S.) per MMBtu. The contract amendment also reduced PGT's take-or-pay obligation from 60 percent to 50 percent of daily contract quantity and eliminated the yearly, monthly, and daily minimum purchase obligations with respect to volumes PGT is currently authorized to import. The make-up of previously incurred take-or-pay gas by PGT is deferred for two contract years, until July 1, 1986, and then make-up of take-or-pay gas incurred before July 1, 1984, is limited to not more than 10 percent of the volume of gas actually taken by PGT during that contract year.

## II. Interventions and Comments

On July 13, 1983, a notice was issued by the ERA inviting comments or petitions to intervene by August 18, 1983.<sup>6/</sup> A total of 16 petitions to intervene and three notices of intervention from state commissions were received.<sup>7/</sup>

Six intervenors opposed PGT's application.<sup>8/</sup> The opposition to the PGT request focused on the issue of whether the Canadian natural gas would be competitive in the California market. These intervenors requested that trial-type hearings be held to determine whether the additional natural gas imports would adversely affect future development of domestic supplies and raise the cost of gas to California consumers, and to determine whether there was a regional need for the gas.

On July 5, 1984, a procedural order was issued by the ERA granting all

interventions and providing an opportunity to comment and to request additional procedures with respect to PGT's application as supplemented on April 15, 1984. Responses were due by August 6, 1984, and answers to responses were due by August 21, 1984. The order stated that it was the Administrator's intention to grant the amended authorization as requested, subject to a showing by PGT, prior to the incremental flow of gas, that the import arrangement, as then structured, would provide natural gas competitively in the markets served. Parties opposing the PGT application were advised that the proposed buyer-seller negotiated arrangement was presumed to be competitive unless the parties demonstrated otherwise.

A total of 12 responses to the July 5, 1984, procedural order were received, ten of which were from parties.<sup>9/</sup>

None of the parties objected to PGT's reduced minimum purchase obligations under the revised contract with Alberta and Southern for the period January 1, 1984, through June 30, 1985. El Paso, Mustang, and Representative Bill Richardson endorsed the reduction in PGT's minimum purchase obligations under its existing import arrangement.

However, all the parties asserted that PGT's proposed import arrangement could not be evaluated without knowing all the terms of the arrangement. For this reason, the parties, except Representative Richardson and the Public Utilities Commission of the State of California, indicated that action on PGT's proposal should be deferred until after all the terms of the proposed import were known and the parties were given an opportunity to comment thereon. Representative Richardson asserted that there should be an evidentiary hearing prior to ERA's final approval of the negotiations between PGT and Alberta and Southern to ensure that the public interest is protected. The Public Utilities Commission of the State of California stated that it did not object to approval of the proposed import project under the conditions stated in the ERA's July 5, 1984, procedural order.

PGT, jointly with PG&E, filed the only answer to these responses. PGT observed that several of the responses reiterated earlier comments about the impact of PGT's minimum purchase obligations and noted that changed circumstances now have given exporters and the U.S. buyers flexibility to negotiate prices which are competitive in the markets served. PGT also noted that it seeks to continue a reliable source of supply for the California market. PGT's import represents about 40 percent of PG&E's available supply.

### III. Decision

PGT's application has been evaluated to determine if the arrangement meets the public interest requirements of Section 1 of the Natural Gas Act. Under Section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest.<sup>10</sup> The Administrator is guided by the Secretary of Energy's policy relating to the regulation of natural gas imports.<sup>11</sup> Under these policy guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test. The need for the import and the security of the import supply are other considerations.

In this case, PGT has asked for a conditional order for the proposed incremental volumes of imported gas to provide a measure of assurance that it will have adequate future gas supplies to satisfy the California market. The decision must balance the applicant's stated need for assurances of long-term supplies with the parties' concern about whether PGT's import will be competitive and market-responsive.

In assessing the intervening parties' concern, we note that PGT has not yet completed the required demonstration of the competitiveness of the incremental volumes of gas proposed for import. However, PGT has demonstrated that a good faith effort to achieve a competitive arrangement is underway. PGT has achieved a new pricing structure for gas it is currently authorized to import, effective November 1, 1984, and expects to request approval to apply those terms to the incremental volumes covered by this application at a future date. This arrangement also includes changes in the take-or-pay and minimum purchase provisions that PGT assets will reduce the cost of this gas in its market and make it competitive.

By requesting that an order be issued conditioned upon achievement of a competitive, market-responsive import arrangement, PGT recognizes that the application before this agency is not yet in full compliance with the policy guidelines. While several of the parties have indicated that action on PGT's application should be deferred until all the terms of its import arrangement are known and commented upon, none of the parties has expressed any strong objection to issuance of the requested conditional order so long as the opportunity is provided to comment and request additional procedures before a final opinion and order is issued.

In evaluating PGT's concern for long-term assurance of adequate supplies, it is noted that none of the parties has suggested that the needs of the northern and central California market can be met solely from domestic

sources of natural gas or that competitively priced Canadian gas is not needed in that market. No one has directly challenged PGT's assessment of its future gas needs. What the parties have questioned is whether Canadian gas is the appropriate choice for meeting those needs if it is not competitive in the markets served.

Therefore, it is considered appropriate in this case to conditionally authorize the import as requested.<sup>12/</sup> The applicant asserts that this will provide a measure of assurance that future gas supplies will be available for the California market. It is concluded, on balance, that continuation of the existing supply of Canadian natural gas for the California market through October 31, 1993, is reasonable and consistent with the policy guidelines, provided that PGT shows, prior to the flow of the gas under the proposed import, that the arrangement, including the pricing and minimum purchase terms, would be competitive in the markets served. The competitiveness of PGT's import arrangement will be fully evaluated in an ERA proceeding before final action is taken. Parties will be given an opportunity to comment on all aspects of the import arrangement and to request additional procedures when PGT applies to make the authorization final.

Accordingly, I find that a conditional order is not inconsistent with the public interest, and thus should be granted.

#### 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 Pacific Transmission Company (PGT) under Docket Nos. G-17350, G-17351 and G-17352 on August 5, 1960 (24 FPC 134), as amended in Docket Nos. CP 65-213, CP 65-214 and CP 65-215 on June 14, 1966 (35 FPC 1003), as amended in Docket Nos. CP 67-187 and CP 67-188 on October 30, 1968 (40 FPC 1147), and as amended in Docket Nos. CP 69-346 and CP 69-347 on March 13, 1970 (43 FPC 418), is hereby further amended to increase the authorized volumes to permit PGT to import up to 1023 MMcf of Canadian natural gas per day for the period November 1, 1985 through October 31, 1993.

B. The amendment set forth in ordering paragraph A above is conditioned on a showing by PGT, prior to the start of the flow of the gas on November 1, 1985, that PGT's import arrangement, as then structured, is competitive in the PG&E markets. Paragraph A becomes effective only upon the issuance of a

final opinion and order by the Administrator approving such amendment.

Issued in Washington, D.C., November 1, 1984.

--Footnotes--

1/ Under FERC Docket Nos. CP 69-346 and CP 69-347, March 13, 1970 (43 FPC 418), PGT is currently authorized to import the following volumes:

Period	Annual Volumes */ (MMcf)	Average Daily Volumes (MMcf/d)
present to 10/31/84 ...	373,500	1023
11/1/85 to 10/31/86 ...	305,870	838
11/1/86 to 10/31/89 ...	153,300	420
11/1/89 to 10/31/93 ...	77,745	213

2/ Incremental volumes PGT has applied for:

Period	Annual Volumes */ (MMcf)	Average Daily Volumes (MMcf/d)
present to 10/31/85 ...	--	--
11/1/85 to 10/31/86 ...	67,525	185
11/1/86 to 10/31/89 ...	220,095	603
11/1/89 to 10/31/93 ...	295,650	810

\*/ Annual volumes were determined by multiplying average daily volumes by 365.

3/ Although Alberta and Southern applied to the NEB for authorization to continue to export natural gas through October 31, 2000, the NEB is its Omnibus Decision of January 27, 1983, authorized Alberta and Southern to export natural gas only through October 31, 1993. Under NEB Licenses GL-3, GL-35, GL-24, and GL-16, Alberta and Southern is currently authorized to export natural gas as follows:

Date	Yearly Average (MMcf)	Average Daily Volumes */ (MMcf/d)
Present to 10/31/90 ...	373,500 **/	1023.3 **/
11/1/90 to 10/31/91 ...	274,766	753.0
11/1/91 to 10/31/92 ...	154,117	422.0
11/1/92 to 10/31/93...	44,600	122.0

\*/ The daily average volume was determined by dividing the yearly average

by 365.

\*\*/ Volumes authorized for export generally equate to the level PGT is seeking to import through October 31, 1990. Thereafter, PGT's proposed import level exceeds the level currently authorized for export.

4/ 48 FR 32852, July 19, 1983.

5/ 49 FR 6684, February 22, 1984.

6/ 48 FR 32852, July 19, 1983.

7/ Intervenors were:

1. Pacific Interstate Transmission Company
2. El Paso Natural Gas Company
3. U.S. Representative Bill Richardson
4. Independent Petroleum Association of New Mexico
5. Oklahoma Independent Petroleum Association
6. Pacific Gas and Electric Company
7. Public Utilities Commission of the State of California
8. Oklahoma Corporation Commission
9. Railroad Commission of Texas
10. ARCO Oil and Gas Company, Division of Atlantic Richfield Company
11. Southland Royalty Company
12. Mesa Petroleum Company
13. Sun Exploration and Production Company
14. Getty Oil Company
15. Rault Petroleum Corporation
16. Ward Petroleum Corporation
17. Mustang Production Company
18. Harrell Energy Company
19. Phillips Petroleum Company

8/ The intervenors who opposed PGT's application were: (1) El Paso Natural Gas Company (El Paso), which is the Pacific Gas and Electric Company's (PG&E) major domestic supplier; (2) the Independent Petroleum Association of New Mexico (IPANM), whose members supply gas to El Paso; (3) U.S. Representative Bill Richardson (New Mexico), whose district includes one of El Paso's major supply areas; (4) the Oklahoma Independent Petroleum Association (OIPA), whose members supply gas to El Paso; (5) Harrell Energy Company (Harrell); and (6) Ward Petroleum Corporation (Ward), both of which are Oklahoma producers supplying El Paso.



9/ The parties responding were: (1) El Paso Natural Gas Company; (2) U.S. Representative Bill Richardson; (3) Phillips Petroleum Company, a major supplier of natural gas to the California market; (4) Rault Petroleum Corporation, a gas producer supplying El Paso from wells in New Mexico; (5) Mustang production Company, an Oklahoma gas producer supplying El Paso; (6) and (7) the applicant, PGT, and its sole resale customer PG&E; (8) the Railroad Commission of Texas; (9) the Oklahoma Corporation Commission; and (10) the Public Utilities Commission of the State of California. Each of the state commissions responding have regulatory responsibilities over natural gas in their respective states. Two responses were received from other than parties to the proceeding: The Energy and Minerals Department of the State of New Mexico and the AN-SON Corporation, an Oklahoma gas producer.

10/ 15 U.S.C. Sec. 717b.

11/ 49 FR 6684, February 22, 1984.

12/ Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application is not a major Federal action significantly affecting the quality of the human environment within the meaning of the national Environmental Policy Act and therefore an environmental impact statement or environmental assessment is not required.