Cited as "1 ERA Para. 70,579"

Northwest Alaskan Pipeline Company (Eastern Leg) (ERA Docket No. 84-14-NG), December 13, 1984.

DOE/ERA Opinion and Order No. 67

Order Removing Conditions and Amending Authorization To Import Natural Gas from Canada and Granting Intervention

I. Background

Northwest Alaskan Pipeline Company (Northwest Alaskan) is currently authorized to import on an average annual daily basis up to 800 MMcf per day of Canadian natural gas from Pan-Alberta Gas Ltd. (Pan-Alberta) at the international boundary near Monchy, Saskatchewan. The natural gas imported by Northwest Alaskan is resold to Northern Natural Gas Company (Northern), a Division of InterNorth, Inc., Panhandle Eastern Pipe Line Company (Panhandle), and United Gas Pipe Line Company (United) and transported through the Eastern Leg of the Alaska Natural Gas Transportation System (ANGTS) prebuilt facilities.

On October 16, 1984, Northwest Alaskan filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act (NGA), Section 9 of the Alaska Natural Gas Transportation Act of 1976 (ANGTA), and DOE Delegation Order No. 0204-111,1/ to remove certain conditions from its existing natural gas import authorization, to authorize changes to its gas sales contract with Pan-Alberta, and to extend the term of its authorization.

Northwest Alaskan purchases Canadian natural gas from Pan-Alberta pursuant to a gas sales contract dated March 9, 1978, as amended (Eastern Contract). Northwest Alaskan resells this gas to Northern, Panhandle and United pursuant to their respective gas purchase agreements dated March 19, 1978, April 14, 1978, and March 9, 1978, as amended. The natural gas is transported over the eastern portion of the ANGTS prebuild, an 823-mile pipeline system owned by the Northern Border Pipeline Company (Northern Border) which extends from the Montana-Saskatchewan border to its present terminus near Ventura, Iowa.

In orders issued April 28, 1980,2/ and June 20, 1980,3/ the Federal Energy Regulatory Commission (FERC), pursuant to Section 3 of the NGA and Section 9 of the ANGTA, authorized Northwest Alaskan to import 800 MMcf per

day through October 31, 1988. On December 15, 1983,4/ the FERC extended the import authorization through October 31, 1992, to be consistent with the export license granted to Pan-Alberta by the Canadian National Energy Board (NEB). However, the FERC conditioned its extension by requiring Northwest Alaskan to (1) renegotiate its Eastern Contract with Pan-Alberta and its purchase agreements with Northern, Panhandle, and United to provide for market-responsive prices and volume obligations; (2) submit contract amendments and necessary tariff changes; and (3) obtain regulatory approval from the ERA, FERC, and NEB.

Northwest Alaskan stated in its application that the first two conditions imposed by the FERC in its December 15 order have been met with this filing and that regulatory approval by the ERA, FERC, and NEB will satisfy the third condition. The NEB subsequently on November 2, 1984, approved the new pricing and volume provisions.

Northwest Alaskan asserted that its revised contracts with Pan-Alberta and its three pipeline repurchasers provide sufficient price and volume flexibility to make the import arrangement responsive to market changes and consistent with the Secretary of Energy's policy guidelines for the importation of natural gas.5/ The renegotiated contract between Northwest Alaskan and Pan-Alberta contains three amendments, which provide for different price and volume obligations for each of the three pipeline repurchasers; these amendments correspond to the changes to be made in the respective gas purchase agreements of Northern, Panhandle and United. In addition, a fourth amendment to the Eastern Contract allocates the maximum daily quantity of 800 MMcf among the three U.S. purchasers according to their volume entitlements under the gas purchase agreements. Northwest Alaskan requested that the amendments be approved effective November 1, 1984.

Northern

Specifically, the amendment directed to Northern establishes a minimum daily volume obligation requiring Northern to take and pay for 20 percent of Northern's maximum daily quantity in the seven months of April through October and 40 percent in the five winter months of November through March. For the 1984-85 contract year, the minimum annual take-and-pay obligation is 50 percent, and for the 1985-86 contract year, it is 60 percent. In addition, there is a 60 percent take-or-pay obligation with a $0.32 (U.S.) per Mcf settlement to be paid for any deficiency below the take-or-pay level.

The amendment also provides for a demand-commodity rate structure for the volumes sold to Northern. The demand component, which is estimated to be

$2.8 million monthly, will consist of (1) the administrative costs incurred by Pan-Alberta in connection with securing and arranging for the transportation of the gas; (2) the cost of transporting volumes resold to Northern through Zones 6 and 9 of the ANGTS prebuilt facilities of Foothills Pipeline (Yukon) Ltd. (Foothills); (3) the cost of gathering and transporting volumes resold to Northern through the facilities of NOVA, AN ALBERTA CORPORATION (NOVA); and (4) the administrative costs incurred by Northwest Alaskan for purchase and resale of Canadian gas at the U.Q.-Canadian border. The demand charge will be redetermined every six months on January 16 and July 1, provided that all Canadian-incurred costs have been reviewed and found acceptable by the NEB. If actual costs differ from those used to compute the demand charge, any overcharges or undercharges would be determined and applied to the next six months at the time of the semiannual redetermination. The Foothills and NOVA charges would be renegotiated if they are substantially increased for reasons including cost allocation, major expansion, or rate design.

The applicant stated that the commodity component will provide for a price at the international border which will enable the gas to be competitive in Northern's market area. For the 1984-85 contract year, the commodity rate will be $2.40 (U.S.) per MMBtu for volumes up to 85 percent of Northern's maximum daily quantity times the number of days in the year. For the 1985-86 contract year, the commodity rate will be $2.45 (U.S.) for such volumes. An incentive rate of $2.30 (U.S.) for volumes purchased each year above 85 percent will apply for both years. Commencing November 1, 1986, the commodity charge and the minimum volume obligations applicable during each contract year will be redetermined through renegotiation, or failing agreement, arbitration.

Panhandle

The minimum daily volume obligation requires Panhandle to take and pay for 30 percent of Panhandle's maximum daily quantity. For the 1984-85 contract year, there is a minimum annual take obligation of approximately 37 percent, and a minimum annual take-or-pay of 50 percent, with a $0.32 (U.S.) per Mcf settlement to be paid for any deficiency below the take-or-pay level.

The amendment includes a demand-commodity rate structure. The demand component is estimated to be $2.1 million monthly. The provisions governing the demand component are the same as for Northern.

The commodity component for the 1984-85 contract year will be $2.14 (U.S.) per MMBtu for volumes purchased up to Panhandle's annual take obligation (37 percent), $2.20 (U.S.) per MMBtu for any additional volumes purchased up to the take-or-pay level of 50 percent, and for all volumes over

50 percent the price will be set quarterly by Pan-Alberta after consultation with Northwest Alaskan and Panhandle concerning the anticipated condition of Panhandle's market. Commencing November 1, 1985, the commodity charge and the minimum volume obligations applicable during each contract year will be redetermined by negotiation, or failing agreement, arbitration.

United

The United agreement establishes different price and take provisions, with three tiers. The minimum daily volume obligation (Tier I) requires United to take and pay for 331/3 percent of the maximum daily quantity. There is also a minimum annual volume obligation of 331/3 percent. There is no take-or-pay obligation.

For Tier I volumes, the initial price will equal the Alberta border price ($2.31 U.S. effective August 1, 1984), plus (1) Foothills' transportation charges for the volumes, and (2) United's share of the cost of fuel and line pack on Foothill's system. The applicant asserts that this price is a minimum floor designed to cover the cost of Canadian prebuilt facilities and return a price at the Alberta border consistent with the price established by the Alberta Petroleum Marketing Commission. This price is subject to renegotiation each May 1 and November 1, at the request of either party. If no agreement is reached, the matter will be resolved by arbitration.

Additional volumes (Tier II) up to United's maximum daily quantity which, when added to the Tier I volumes make the weighted average price of United's purchases under this contract equal the weighted average price of United's domestic gas purchases, may be purchased at a price equal to the Alberta border price plus the cost of fuel required to transport the gas through the Foothills system.

United will have an obligation to purchase any remaining contract volumes (Tier III volumes) at a price ordered by Pan-Alberta if that price is less than the price of any of the domestic gas supplies purchased by United. If the price for such Tier III volumes is equal to that of any of United's domestic supplies, United must purchase the Tier III volumes on a proratable basis with such equally priced domestic gas. Each month Pan-Alberta will determine the price at which to offer Tier III volumes based on prevailing conditions in United's market.

In addition to the above, United will also pay Northwest Alaskan each month for the administrative costs it incurs in the purchase and resale of United's volumes at the U.S.-Canadian border.

Northwest Alaskan stated in its application that the proposed contract amendments are tailored to each of the three U.S. purchasers' markets in order to make Canadian natural gas continually market-sensitive throughout the term of the contracts. Under the proposed contract amendments and based upon the minimum take-and-pay volume obligations of each of the three U.S. purchasers, Northwest Alaskan estimated that the average unit cost of gas purchased under the Eastern Contract for the 1985 contract year would be $3.35 (U.S.) per MMBtu at the border. Northwest Alaskan maintained that the per unit cost to its three U.S. purchasers would approximate $4.00 (U.S.) per MMBtu if the proposed contract amendments were not approved. If each of the three U.S. purchasers took 100 percent of their contracted volumes under the amendment for the 1985 contract year, Northwest Alaskan estimated the unit cost of the gas would be about $2.71 (U.S.) per MMBtu for United and Panhandle, and about $2.92 (U.S.) per MMBtu for Northern. Northwest Alaskan further maintained that approval of these proposed amendments would result in a savings of $617 million (U.S.) in the 1985 contract year.

Northwest Alaskan stated that the proposed contract amendments will allow Canadian gas to compete in U.S. markets. Hence, Northwest Alaskan requested that the ERA find its amendments in compliance with the ERA's new policy guidelines, remove the conditions imposed by the FERC in the December 15, 1983, order and unconditionally extend its import authority for a term to coincide with the terms of its Eastern Contract and the gas purchase agreements with its three U.S. purchasers which extend through October 31, 2002. Alternatively, Northwest Alaskan requested an extension through October 31, 1996, consistent with the export authorization sought by Pan-Alberta before the NEB.

Furthermore, Northwest Alaskan contended that approval of this application is in the public interest. It asserted that the amendments ensure that the prices are responsive to conditions in the individual U.S. markets, and that they will remain market-sensitive throughout the life of the contracts. Northwest Alaskan claimed the gas will be needed as the present surplus of gas dissipates by the late 1980's, and that the extension will not cause undue reliance on Canadian imports. Northwest Alaskan also claimed that Canadian imports represent a more secure and dependable energy supply than OPEC oil. Northwest Alaskan also asserted that since its purchasers and their customers have borne the early initial costs of transportation of Canadian gas through the Eastern Leg of the prebuilt ANGTS system, they should also receive the benefits that will accrue to them from the proposed extension--an additional secure and dependable supply of Canadian gas through the ANGTS system with the attendant lower transportation charges resulting from declining depreciation and related expenses.

Finally, Northwest Alaskan stresses the importance of the import authorization extension by asserting that it will provide Northern Border Pipeline Company, the transporter of the Eastern Contract volumes, an opportunity to lower its cost of service on a long-term basis and thus make the transportation of these volumes more economical. Northern Border has filed for such a tariff and certificate extension with the FERC in Docket Nos. RP85-25-000 and CP78-124-009.

II. Interventions

On October 23, 1984, the ERA issued a notice of Northwest Alaskan's application, inviting protests or motions to intervene, which were to be filed by November 26, 1984.6/ The ERA received nine motions to intervene in this proceeding.7/ None of the parties opposed the application, or requested further proceedings. Four movants, Panhandle, United, Pan-Alberta and Foothills, submitted comments supporting the application. Panhandle stated in its motion that the proposed contract amendments will ". . . allow Canadian gas to compete in the United States, will ensure that prices for Canadian gas in United States markets are market-sensitive, and will result in lower gas costs to Northwest Alaskan's customers and to ultimate consumers." Pan-Alberta, in its motion, stated that ERA approval of Northwest Alaskan's application ". . . will serve the public interest by enhancing the economic soundness of the ANGTS prebuild project and thus helping to ensure the long term availability of competitive, secure, and reliable Canadian gas supplies for U.S. consumers."

III. ANGTA Jurisdiction

On February 15, 1984, the Secretary of Energy in Delegation Order 0204-111, delegated to the Administrator authority under Section 3 of the Natural Gas Act to regulate the importation of natural gas in connection with the construction and operation of ANGTS. This authority previously was delegated to the FERC.

The FERC has determined in a series of orders,8/ including the previously cited 1980 authorizations of this import and the subsequent December 15, 1983, conditional extension, that the importation of natural gas for transportation through the prebuilt facilities of the ANGTS is related to the construction and initial operation of the ANGTS within the meaning of Section 9 of the ANGTA.9/ In so finding, the FERC reasoned that:

> Inasmuch as the Northern Border and Western Leg segments of the ANGTS originate at the Canadian border, any decision affecting the

volumes of gas transported through the `prebuilt' segments of the ANGTS, or the price paid by consumers of such gas (and thereby, its marketability), could have an impact on the financial viability of those segments, which in turn could have an impact on the willingness of lenders and investors to finance the Alaskan segment. Thus, even though the `prebuilt' sections have now been constructed and have gone into operation, imports of additional volumes of Canadian gas through these segments are clearly related to the financial viability of the Alaskan segment and of the ANGTS itself as a coherent system to transport gas from the North Slope of Alaska to the lower-48 states.10/

This reasoning applies with equal validity to Northwest Alaskan's present request. Northwest Alaskan's present application is related to the construction and initial operation of ANGTS, within the meaning of Section 9 of ANGTA. Pursuant to Section 9 of ANGTA, Northwest Alaskan's application was reviewed expeditiously and this final decision on the application took precedence over similar import applications.

IV. Decision

Northwest Alaskan's application has been evaluated to determine if the arrangement meets the public interest requirement of Section 3 of the NGA. Under Section 3, an import is to be authorized unless there is a finding that it will not be consistent with the public interest. The Administrator is guided by the Secretary of Energy's February 1984 policy on natural gas imports, wherein the competitiveness of the arrangement is a key consideration in assessing the public interest. The need for the import and the security of the supply are other considerations set forth in the policy.

The assessment of this application also took into account the uniqueness of the prebuild as part of the ANGTS, and the commitments of the Canadian and U.S. Governments to the ANGTS. In announcing the approval of the renegotiated contract between Northwest Alaskan and Pan-Alberta on November 2, 1984, the Canadian NEB gave special consideration to this import arrangement, exempting it from its export policy guidelines by allowing an average export price below the Toronto wholesale price. Similarly, the FERC has taken two actions in the last few months which reaffirm the commitment to the ANGTS prebuild. On July 30, 1984, in Order No. 380A,11/ the FERC stated that Order No. 380 12/ does not apply to Northwest Alaskan's sales tariff and on October 24, 1984, in Order No. 380C,13/ the FERC reiterated that Order No. 380 does not apply to the minimum take provision of Northwest Alaskan's tariff.

The renegotiated gas sales contract between Northwest Alaskan and

Pan-Alberta, by providing separate and distinct pricing and volume arrangements for each of its three U.S. purchasers (Northern, Panhandle, United), provides for a substantially more flexible and market-oriented import arrangement than currently exists. The contract amendments contain reduced purchase obligations, demand-commodity type rate structures, frequent opportunities for renegotiation, volume-related price incentives, and arbitration provisions. The agency finds that these specific features of the renegotiated contract are sufficient to assure these purchasers a competitive and market-responsive supply of natural gas over the term of the contract.

Northwest Alaskan asserted in its application that the new contract amendments will ". . . ensure Northern, Panhandle and United of required and reliable Canadian gas supplies through 1996." As recognized in the Secretary of Energy's gas import policy statement, the question of the need for an import is intrinsically tied to its competitiveness. Given the fact that commercial parties freely negotiated the proposed import arrangement, tailoring it to the requirements of the specific markets served, the finding that the import should remain competitive through the term of the contract, and that the issue of need for the Northwest Alaskan volumes has not been contested in this proceeding, the agency determines that there is a need for this imported gas.

Natural gas from Canada has been imported into a wide range of domestic markets for many years and there has been nothing that would call into question Canada's future reliability as a supplier of natural gas to this country. Neither has this issue been contested in this proceeding. As long as Canadian gas suppliers maintain their historical reliability and are competitively priced, the ERA believes these supplies can continue to help fill the gap between domestic production and total demand.

Northwest Alaskan has requested an extension of its current import authority for a term commensurate with the terms of its gas sales contract with Pan-Alberta and its gas purchase agreements with its three U.S. customers which extend through October 31, 2002. Alternatively, Northwest Alaskan requested an extension through October 31, 1996, consistent with Pan-Alberta's request of the Canadian NEB to extend its export authorization. The ERA agrees with Northwest Alaskan that an extension of the import authority through October 31, 2002, will provide the greatest opportunity for cost of service reductions and completion of the ANGTS.

Overall, this import arrangement is reasonable, flexible and market competitive when viewed as a whole. Furthermore, no member of the public came forward to contend the contrary, or that it was otherwise inconsistent with

the public interest. Northwest Alaskan has satisfactorily demonstrated that its imported gas will be competitive for each of its three U.S. pipeline repurchasers and that the contract amendments contain sufficient flexibility to respond to the anticipated needs of their markets.

After taking into consideration all information in the record of this proceeding, I find that the authorization requested by Northwest Alaskan is not inconsistent with public interest and should be granted.

Order

For the reasons set forth above, pursuant to Section 3 of the Natural Gas Act and Section 9 of the Alaska Natural Gas Transportation Act, it is ordered that:

A. The import authorization previously issued by the Federal Energy Regulatory Commission to Northwest Alaskan Pipeline Company (Northwest Alaskan) under Docket Nos. CP78-123, et al., on April 28, 1980 (11 FERC Para. 61,088), and June 20, 1980 (11 FERC Para. 61,302), as amended in Docket Nos. CP78-123-021, et al., on December 15, 1983 (25 FERC Para. 61,384), is hereby further amended to remove the conditions imposed on its current authorization and thereby extend the term of its authorization from October 31, 1988, to October 31, 1992, and to extend further the term of its authorization from October 31, 1992, to October 11, 2002, in accordance with the pricing and other provisions established in the contracts submitted as part of its application.

B. The effective date of this order is November 1, 1984.

C. With respect to the natural gas authorized by this Order, Northwest Alaskan shall file with the ERA in the month following each calendar quarter, quarterly reports showing, by month, the quantities of imported gas resold to each of its three U.S. pipeline repurchasers and the average price, on an MMBtu basis, paid by each of these three pipeline companies. The pricing and volume data shown for United Gas Pipe Line Company should be by price tier category and the pricing data for Panhandle Eastern Pipe Line Company and Northern Natural Gas Company should depict the demand and commodity components of the price.

D. The motions of intervention, 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 the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in

their motions of intervention 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., December 13, 1984.

--Footnotes--

1/ On February 15, 1984, the Secretary of Energy, in Delegation Order 0204-111, delegated the authority to the Administrator of the ERA to regulate the importation and exportation of natural gas under Section 3 of the Natural Gas Act, including imports through the ANGTS (49 FR 6690, February 22, 1984).

2/ Northwest Alaskan Pipeline Company, Docket Nos. CP 78-123, et al., 11 FERC Para. 61,088.

3/ Northwest Alaskan Pipeline Company, Docket Nos. CP 78-123, et al., 11 FERC Para. 61,302.

4/ Northwest Alaskan Pipeline Company, Docket Nos. CP 78-123-021, et al., 25 FERC Para. 61,384.

5/ 49 FR 6684, February 22, 1984.

6/ 49 FR 43091, October 26, 1984.

7/ TransCanada PipeLines Limited, Inter-City Gas Corporation, Northern Natural Gas Company, Division of InterNorth, Inc., Northern Border Pipeline Company, Panhandle Eastern Pipe Line Company, Pan-Alberta Gas Ltd., Foothills Pipe Lines (Yukon) Ltd., Texas Eastern Transmission Corporation, and United Gas Pipe Line Company.

8/ See, e.g., the orders issued on January 11, 1980 (10 FERC Para. 61,032 at pp. 61,079 and 61,087), April 28, 1980 (11 FERC Para. 61,088 at pp. 61,138 and 61,191), October 1, 1981 (17 FERC Para. 61,001 at pp. 61,002 and 61,004) and August 18, 1982 (20 FERC Para. 61,197 at pp. 61,382 and 61,385). See also Midwestern Gas Transmission Co. v. FERC, 589 F.2d 603, 614-616 (D.C. Cir. 1978); Iowa State Commerce Commission v. Federal Inspector, 730 F.2d 1566, 1571 (D.C. Cir. 1984).

9/ 15 USC Sec. 719g.

10/ 25 FERC Para. 61,384 at p. 61,843.

11/ FERC Statutes and Regulations, Para. 30,584.

12/ FERC Statutes and Regulations, Para. 30,571. Order No. 380 amended the FERC's regulations by eliminating from natural gas pipeline tariffs any minimum commodity provisions that operate to recover variable costs. The objectives of that Order were to increase incentives to buy lower cost gas, increase competition among pipeline supplies, and encourage contract renegotiation.

13/ FERC Statutes and Regulations, Para. 30,607.