

Cited as "1 ERA Para. 70,582"

Pacific Gas Transmission Company (ERA Docket No. 82-16-NG), January 29, 1985.

Order Providing Opportunity for Additional Comment and to Request Additional Procedures

I. Background

On October 28, 1982, Pacific Gas Transmission Company (PGT) filed two applications with the Economic Regulatory Administration (ERA) to amend its current natural gas import authorization to permit PGT to continue to import natural gas from Canada at its currently authorized level through October 31, 2000. At the time these applications were filed, PGT was authorized to import 1023 MMcf per day of Canadian natural gas from Alberta and Southern Gas Company, Ltd. (Alberta and Southern) through October 31, 1985, after which authorized volumes would decline and expire completely on October 31, 1993.

On June 7, 1983, PGT amended these October 28, 1982, applications to change the proposed ending date from October 31, 2000, to October 31, 1993. On July 13, 1983, the ERA issued a notice consolidating PGT's two applications into one request for an incremental increase in authorized volumes of 1.9 Tcf to be imported during the period November 1, 1985, through October 31, 1993, and inviting comments and motions to intervene. Responses were received from 19 intervenors, six of whom opposed PGT's application. The opposition to PGT's request was focused on the issue of whether PGT's import arrangement as then proposed would be competitive in the California market served.

On April 15, 1984, PGT filed a supplement to its consolidated application in response to the Secretary of Energy's new policy guidelines for natural gas imports.^{1/} In its supplement, PGT requested a conditional authorization, subject to completion of negotiations with its supplier on pricing and minimum purchase terms for the incremental volumes. In the same supplement, PGT cited reductions in its minimum purchase obligations of currently authorized volumes for the period January 1, 1984, through June 30, 1985, 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, a daily minimum purchase obligation of 40 percent of the daily contract quantity, and no monthly minimum purchase obligation.

On July 5, 1984, the ERA issued a procedural order granting all interventions and providing an opportunity to comment and to request additional procedures on PGT's application as supplemented on April 15, 1984. Twelve responses were received. None of the parties objected to PGT's reduced minimum purchase obligations under the revised contract with its supplier, Alberta and Southern, for the period January 1, 1984, through June 30, 1985. However, all of the parties asserted that PGT's proposed import arrangement could not be fully evaluated without knowing all of the terms of the arrangement.

As further evidence of PGT's negotiations toward a more competitive import arrangement, on October 1, 1984, PGT submitted a report of contract amendments to its gas sales contract with Alberta and Southern indicating a reduction in the price for Canadian natural gas which PGT is currently authorized to import and an improvement in the minimum purchase obligations contained in PGT's April 15, 1984, supplement. These contract amendments were made effective November 1, 1984, which was also the effective date of the new Canadian pricing policy announced by the Canadian government on July 13, 1984. A new price structure was established for currently authorized import volumes providing for a commodity rate at the international border of \$2.99 (U.S.) per MMBtu, subject to semiannual 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 projected to result in a average delivered price at the California border of \$3.63 (U.S.) per MMBtu. The contract amendments 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.

On November 1, 1984, the ERA issued Opinion and Order No. 63 granting PGT the authorization to import the additional volumes of natural gas from Canada, 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 California market served. In the conditional order, the ERA stated that the parties to the proceeding would 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.

II. Supplement to the Application

On December 24, 1984, PGT filed and served on the parties a supplement requesting final approval of the additional volumes conditionally authorized in the ERA's Opinion and Order No. 63. In the supplement, PGT states that it

proposes to apply the terms of its renegotiated contract with Alberta and Southern, for currently authorized volumes, which became effective November 1, 1984, to the additional volumes conditionally authorized. PGT asserts that its reduced minimum purchase obligations and revised price structure will enable it to market the requested additional volumes of Canadian gas competitively. The applicant cites two provisions for assuring competitiveness over the term of the import arrangement: (1) the provision in its renegotiated contract for semiannual price review and redetermination, and (2) the "equitable purchase clause" under which imported gas will be purchased on an equivalent basis with domestic gas, as long as the price is competitive, combined with complete elimination of minimum physical take provisions.

III. Opportunity for Further Comment and to Request Additional Procedures

At this stage, the issue in this proceeding is the competitiveness of the import arrangement over the term of the contract. However, in view of the considerable changes in the arrangement since the application was originally filed and comments were solicited, opportunity is being provided by this order for the parties to comment on all aspects of the arrangement. The ERA indicated in Order No. 63 that this opportunity would be afforded. Parties should review the arrangement and their earlier comments at this time. If any opposition continues, parties must restate that opposition in order for it to be taken into consideration in the final decision. Parties may incorporate by reference comments previously filed.

Parties are also being given an opportunity to request additional procedures at this time. Any party requesting the right to file further additional written comments must explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the supplement and responses filed by the parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

IV. Late Intervention

The An-Son Corporation filed written comments on August 3, 1984, but did not seek to intervene. Subsequently, in a letter dated August 24, 1984, sent to PGT, An-Son requested leave to intervene, but did not file a copy with the ERA. An-Son's request to intervene was filed with the ERA on January 14, 1985. Since no delay in the proceeding or prejudice to any party will result from granting this late intervention, this order grants An-Son's request.

Order

For the reasons set forth above, it is ordered that:

A. Any party to this proceeding may file further written comments on any aspect of the proposed import arrangement and may request additional procedures in accordance with 10 CFR Sections 590.310, 590.311, 590.312, and 590.313, as applicable. All responses to this order shall be filed and served on all parties no later than 4:30 p.m., E.D.T., February 28, 1985.

B. Any party wishing to respond to the comments submitted by February 28, 1985, should file and serve those responses no later than 4:30 p.m., E.D.T., March 15, 1985.

C. All written submissions shall be filed with the Economic Regulatory Administration, Natural Gas Division, Room GA-033, RG-43, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

D. The motion for leave to intervene by the An-Son Corporation is hereby granted, subject to the administrative procedures in 10 CFR Part 590, provided that its participation shall be limited to matters affecting asserted rights and interests specifically set forth in the motion for leave to intervene and that its admission shall not be construed as recognition by the ERA that it might be aggrieved because of any order issued by the ERA in this proceeding.

Issued in Washington, D.C., on January 29, 1985.

--Footnote--

1/ 49 FR 6684, February 22, 1984.

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