

Cited as "1 ERA Para. 70,585"

Northwest Alaskan Pipeline Company (ERA Docket No. 84-16-NG), February 26, 1985.

DOE/ERA Opinion and Order No. 73

Order Amending Authorizations to Import Natural Gas from Canada, Allowing Spot Market Sales, and Granting Interventions

I. Background

On October 16, 1984, Northwest Alaskan Pipeline Company (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, Section 9 of the Alaska Natural Gas Transportation Act (ANGTA), and DOE Delegation Order No. 0204-111 1/ to amend its existing import authorizations to include a "blanket" authorization to make spot or short-term sales of Canadian natural gas in the United States from authorized volumes not purchased by its long-term contract customers. All such sales would be made on an interruptible or best-efforts basis and, according to the application, would not preempt Northwest Alaskan's firm requirements or displace other Canadian gas sales. Northwest Alaskan asserts that it intends to use the existing prebuilt facilities of the Alaska Natural Gas Transportation System (ANGTS) for spot sales arrangements to the maximum extent possible.

Under the blanket authority requested, Northwest Alaskan wants to be able to negotiate individual spot sales contracts within the limits of the existing authorizations without prior ERA authorization for each sale. The specific terms and conditions for each sale, including the price, volume, and duration would be determined by negotiation between Northwest Alaskan, Northwest Alaskan's Canadian supplier, Pan-Alberta Gas Ltd. (Pan-Alberta), and the ultimate purchaser. Northwest Alaskan proposes to report the details of any spot sales arrangements effected in a semiannual report filed with the ERA within 40 days after January 1 and July 1 of each year.

Northwest Alaskan is currently authorized to import up to 240,000 Mcf of Canadian natural gas on an annual average daily basis through the import point near Kingsgate, British Columbia, during a term ending October 31, 2001. This gas is resold to Pacific Interstate Transmission Company (PIT) and transported over the Western Leg of the prebuilt portions of the ANGTS, and through other pipelines for eventual sale in southern California. In addition, Northwest Alaskan is currently authorized to import up to 800,000 Mcf of Canadian

natural gas on an annual average daily basis through the import point near Monchy, Saskatchewan, over a term ending October 31, 2002. This gas is transported over the Eastern Leg of the ANGTS prebuilt and resold to three purchasers, Northern Natural Gas Company, a Division of InterNorth, Inc. (Northern), Panhandle Eastern Pipe Line Company (Panhandle), and United Gas Pipe Line Company (United).^{2/}

Northwest Alaskan maintains that granting its request to amend its existing authorizations to permit spot sales of Canadian gas not taken by its long-term contract customers is in the public interest for several reasons. First, spot sales of Canadian gas utilizing the ANGTS prebuilt facilities will lower the unit costs of transporting Canadian gas to U.S. markets through the ANGTS. Such transportation cost reductions, according to Northwest Alaskan, would benefit Northwest Alaskan's U.S. contract purchasers as well as any other U.S. purchasers who receive this gas. Second, spot sales would provide an economical, interruptible supply of gas which might enable Northwest Alaskan's contract customers to recapture customers that have left their systems in recent years and to maintain customers that might otherwise leave their systems for alternative fuels. Thus, Northwest Alaskan says, the facilities of the U.S. contract customers would be more fully utilized to the benefit of customers of these pipeline systems. Recapturing and maintaining gas loads, it continues, would benefit U.S. consumers by ensuring access to a long-term secure supply of Canadian natural gas for U.S. gas markets, which would be available long after the current short-term surplus has dissipated.

II. Interventions and Comments

On November 2, 1984, the ERA issued a notice inviting protests, motions to intervene, and written comments by December 19, 1984.^{3/} In response to the notice, the ERA received ten timely motions to intervene, including one joint motion by two intervenors, a motion by Transwestern Pipeline Company (Transwestern) filed one day late. There was no opposition to any of the motions for intervention. Further, no delay in the proceeding or prejudice to any party will result from granting Transwestern's late intervention. Accordingly, this order grants intervention to all persons who moved to intervene.^{4/} Pan-Alberta filed an answer to El Paso's intervention 13 days late, opposing El Paso's request for a trial-type hearing. There was no opposition to Pan-Alberta's late filing. Since no delay in the proceeding or prejudice to any party will result, this order accepts Pan-Alberta's late filing.

El Paso Natural Gas Company (El Paso), who intervened as a competing pipeline providing domestic natural gas in the southern California market,

requests a trial-type hearing to determine (1) whether a need for additional Canadian gas exists in the market areas served by the Western Leg of the ANGTS vis-a-vis the availability of domestic gas supplies in these same areas; (2) the extent of the alleged cost reductions for Canadian gas supplied by Northwest Alaskan under long-term import arrangements; and (3) the effect on domestic suppliers forced to compete with Canadian spot-sales gas at essentially subsidized prices. Specifically, El Paso alleges that, under this arrangement, purchasers of the proposed short-term, spot-sale supplies will be subsidized at the expense of long-term purchasers because the tariffs paid by long-term purchasers recover all of the fixed costs associated with imported gas delivered through the ANGTS. El Paso contends that such price discrimination would operate to the detriment of domestic gas suppliers, including El Paso, to the extent that such suppliers are forced to compete with Canadian spot-sale gas at subsidized prices. Finally, El Paso contends that the ERA does not have sufficient information about the terms of the proposed short-term spot sales arrangements and how the blanket sales program would be implemented to support a reasoned decision.

Pan-Alberta states in answer to El Paso's intervention and request for hearing that a trial-type hearing on the issue of need is not required since need for the gas is presumptively shown by the fact that spot sales are entered into voluntarily and El Paso has not presented any information refuting that presumption. Pan-Alberta also points out that a trial-type hearing on the extent of cost savings to Northwest Alaskan's long-term customers resulting from increased use of the ANGTS due to spot market sales would not be appropriate because jurisdiction over tariffs charged for transportation of natural gas within the United States lies with the Federal Energy Regulatory Commission (FERC) and not the ERA.

Pacific Gas Transmission Company (PGT), owner and operator of the Western Leg of the ANGTS and supplier of Canadian gas to the northern and central California markets, indicated that the ERA may have to attach conditions to any authorization granted in order to carry out its statutory responsibilities without a case-by-case review. While not opposing the application, PGT suggests that the ERA must retain the ability to determine whether spot sales authorized on a blanket basis conform to the Secretary of Energy's import guidelines.⁵ PGT states that the ERA should consider what impact blanket proposals have on the ability to maintain competitive terms for long-term, firm supplies of imported gas in markets that would be affected. PGT observes that Northwest Alaskan's proposed semiannual reporting procedure and its stipulation that any sales outside of its present firm customers' market would not displace other Canadian gas are among the safeguards needed to permit the ERA to proceed without a case-by-case review of each spot sale

import.

Both El Paso and PGT focus their concern on the competitive impact of the requested blanket authorization, and suggest such competition would be unfair to domestic suppliers in El Paso's case and long-term importers in PGT's case. The ERA believes that domestic supply systems can adjust to any increased competition by crafting arrangements responsive to the marketplace without government assistance or interference. Domestic supply systems may have to reduce their prices, change other contract terms, or offer enhanced availability of supplies over the long term to compete. However, the advent and impact of spot sales of Canadian gas is not different from the burgeoning domestic spot sales market. In both cases, domestic suppliers must compete in order to continue to participate in the market.

The subsidiary issue of need raised by El Paso has already been decided. First, need for this quantity of gas has already been determined by the FERC and most recently by the ERA in Opinion and Order Nos. 67 and 68 when it extended Northwest Alaskan's authorizations. Second, as noted by Pan-Alberta in its answer to El Paso, need is a function of competitiveness and is a rebuttable presumption. El Paso failed to demonstrate that the transactions conducted under the blanket authorization would not be competitive, and thus failed to rebut the presumption that the gas will be needed.

The subsidiary issues of how the price components for spot sales arrangements are structured under this blanket authorization and their impacts are legitimate concerns. Spot sales will increase the utilization of the ANGTS, and hence lower unit costs to all ANGTS users, as long as the price structure for the spot sales includes an amount to cover a share of the fixed costs of transportation over the ANGTS. There is no information in the record, however, indicating how the price for spot sales would be structured. What is in the record is that, however structured, each spot sale, including the price, would be freely negotiated, and therefore can be presumed to be competitive. However, if the tariff structure for long-term contract gas could operate to subsidize spot market purchasers to the detriment of competing domestic suppliers, the FERC, which has jurisdiction over tariff and rate matters for imported gas, must decide what adjustments, if any, are appropriate.

Accordingly, El Paso's request for a trial-type hearing is denied on the grounds that El Paso failed to identify material and relevant factual issues genuinely in dispute, and that there is no need for such a hearing to enable the ERA to make a decision on this application.

PGT supports a requirement in this blanket authorization, as Northwest Alaskan has stipulated, that spot sales under the arrangement will not displace other Canadian gas nor preempt Northwest Alaskan's firm contract requirements. PGT is concerned that the spot sales under this blanket authorization might otherwise have a detrimental impact on long-term imports of Canadian gas. While Northwest Alaskan and PGT have indicated their desire to protect long-term contracts for Canadian gas from competition from the spot market, we have a different perspective. Both short-term and long-term imports have roles to play in the marketplace. Each type of supply has different components and the arrangement will be more or less appealing to a particular customer depending upon that customer's needs. If the customer finds a short-term purchase more attractive than an existing long-term arrangement, that represents a signal that the long-term arrangement should be restructured or renegotiated to remain competitive. While the need for assured long-term supplies often overrides the desire for short-term savings, this is not always the case, and participants in the changing natural gas market must be sufficiently flexible to respond to competition in the various forms it takes in order to retain their position in that market. The ERA sees no need to impose conditions on this authorization to protect long-term arrangements from competition, even in the short term. This, however, would not prevent Northwest Alaskan from imposing such limitations on its own initiative.

United, a long-term customer of Northwest Alaskan who intervened in support of the application, states that spot sales would lower United's cost of transporting Canadian gas through the ANGTS and may enable Northwest Alaskan's existing customers to retain customers that might otherwise be lost to alternative fuels.

Pan-Alberta, Northwest Alaskan's supplier who intervened in support of the import proposal, contends that sales under the requested blanket authorization will necessarily be competitive because they will occur only under terms voluntarily negotiated by suppliers and purchasers.

III. Decision

Northwest Alaskan's application has been reviewed to determine if amendment of its import authorizations to allow spot market sales of gas not taken by its long-term contract purchasers meets the public interest requirements of Section 3 of the Natural Gas Act. Under Section 3, an import is to be authorized unless there is a finding that the import "will not be consistent with the public interest." 6/ In making this finding, the Administrator is guided by the Secretary of Energy's policy relating to the regulation of natural gas imports. Under this policy, competitiveness of an

import arrangement in the markets served is the primary consideration for meeting the public interest test.

Another factor influencing this decision is the special circumstance of the prebuilt portion of the ANGTS, which Northwest Alaskan states would be used to the maximum extent possible in moving spot sales gas to market. The DOE policy guidelines recognize the uniqueness of the ANGTS prebuild. Furthermore, in DOE/ERA Opinion and Order Nos. 67 and 68, the ERA made a finding that Northwest Alaskan's applications were related to the construction and initial operation of ANGTS within the meaning of Section 9 of ANGTA. The same volumes are involved in the instant application, and sale of those volumes on the spot market does not affect the applicability of ANGTA.

In addition, this decision recognizes recent institutional changes in the natural gas industry, particularly the development of the spot market. An active spot market, along with more flexible long-term contracts, are among the new market mechanisms that are allowing pipeline and distribution companies, producers, and consumers to adjust more rapidly to changing market conditions.^{7/} The DOE's policy is to foster full development of a spot market as an integral part of a properly functioning market for natural gas, while assuring that unexpected, market-disruptive consequences do not occur during this transitional period to a deregulated market. Furthermore, a spot market helps achieve the policy goal for imports of having "a supply of natural gas supplemental to domestic production available on a competitive, market-responsive basis. . . ." ^{8/}

In its comments, PGT recommends that in granting an authorization the ERA should reserve for itself the ability to determine that the DOE import policy guidelines will be satisfied by structuring such blanket arrangements to contain adequate safeguards to assure that any adverse impacts are avoided. While the ERA does not agree with the specific conditions recommended by PGT, the ERA does agree with PGT that some safeguards are warranted.

Spot market sales by their nature are quick, short-term transactions designed to adapt gas sales to changing market conditions. Accordingly, requiring each spot sale to be considered individually with a notice and comment period would defeat this purpose since the opportunity to make the spot sale could pass before the required administrative procedures are completed. The time required by the administrative process necessitates that, if quick, short-term, spot transactions are to be approved at all, they must be reviewed as a group or on a blanket basis using information presented about the type of transaction and the circumstances under which such transactions would be undertaken.

Moreover, the nature of spot sales arrangements--that each spot sale is voluntarily negotiated, short-term, executed on an interruptible, best-efforts basis--and, in Northwest Alaskan's case, the fact that they are made from volumes already authorized for import but not taken by Northwest Alaskan's long-term purchasers, provide assurance that such transactions will be consistent with the policy guidelines and in the public interest. Thus, the series of spot sales transactions proposed by Northwest Alaskan can be evaluated and found to be in the public interest without knowing the precise terms of each sale, inasmuch as each sale is freely negotiated and would not take place if the gas was not marketable, not competitive, and not needed. It is not essential to know in advance the terms of each sale as long as the parameters for each sale are known.

However, the ERA does have the responsibility of ensuring that those parameters are in the public interest. Therefore, the ERA does believe that some conditions are necessary to provide safeguards against unintended and unanticipated results because the blanket authorization mechanism is a new and untried concept. Such safeguards should include a reporting requirement and a limitation on the term of the authorization. The latter will provide an opportunity for review of the blanket authorization mechanism and its impacts after a reasonable period of time.

Accordingly, the ERA is limiting the blanket authorization requested by Northwest Alaskan to make spot market sales of Canadian gas to a two-year period. The two-year period would begin on the date of first delivery under this authorization. This limitation is imposed in recognition that a blanket authorization for short-term, spot market sales is new and experimental. Two years or less is the typical length of a spot market sale. Granting the blanket authorization as requested by Northwest Alaskan would allow long-term transactions to be negotiated. A two-year limit on the term will provide the ERA the opportunity to review the impacts of the program before any lengthier authorization is considered. Assuming the spot market and the blanket authorization operate as envisaged, it should not be difficult for Northwest Alaskan to request and receive an extension of the blanket authorization.

Furthermore, to facilitate the review of spot market sales transacted under this authorization, the ERA has concluded that a quarterly reporting requirement rather than the semiannual requirement proposed by Northwest Alaskan is required. This frequency of reporting is consistent with that required in other recently issued import authorizations. Under this requirement, Northwest Alaskan must report whether a spot sale has been made, and if so, the details of each spot sale transaction during the preceding quarter, including the purchase and sales price, volume, contract adjustment

and take provisions, duration of the agreement, ultimate suppliers and purchasers, and markets served. The ERA reserves the right to amend or further condition the blanket import authorization based upon periodic review of the spot market sales effected. The ERA believes that these conditions will provide the information needed to evaluate the impact of spot market sales under the Northwest Alaskan proposal on a timely basis. This will allow the ERA to adequately protect the public interest.

No intervenor has claimed that Northwest Alaskan's proposed arrangement does not conform to the DOE policy guidelines. At most, intervenors have raised concerns that there was not sufficient information in the record to enable the ERA to ascertain compliance with the guidelines. The ERA has concluded that the information Northwest Alaskan has presented demonstrates that the spot sales arrangements entered into under Northwest Alaskan's proposal would be freely negotiated, and would not take place if they were not competitive arrangements.

Need and security of supply are not issues in this case. As discussed above, the ERA made findings on the need for and security of supply of the volumes under consideration in this docket in Opinion and Order Nos. 67 and 68, issued December 14, 1984.

After taking into consideration all information in the record of this proceeding, I find that amendment of the existing authorizations to provide the blanket import authority requested by Northwest Alaskan, limited as discussed above, is not inconsistent with the public interest and should be granted.^{9/}

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 (FERC) to Northwest Alaskan Pipeline Company (Northwest Alaskan) under Docket Nos. CP 78-123, 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. CP 78-123-021, et al., on December 15, 1983 (25 FERC Para. 61,384), as amended in DOE/ERA Opinion and Order No. 67 (Eastern Leg), issued December 13, 1984, in ERA Docket No. 84-14-NG (1 ERA Para. 70,579), is hereby further amended to permit Northwest Alaskan to make spot or short-term sales of authorized volumes not taken by Northwest Alaskan's long-term contract purchasers,

Northern Natural Gas Company, a Division of InterNorth, Inc., Panhandle Eastern Pipe Line Company, and United Gas Pipe Line Company, to the extent that these purchasers do not take their full contract amount during any contract year, consistent with the terms set forth in the application submitted in this docket, as modified by this Order.

B. The import authorization previously issued by the FERC to Northwest Alaskan under Docket Nos. CP 78-123, et al., on January 11, 1980 (10 FERC Para. 61,032), and Docket Nos. CP 78-123, et al., on June 13, 1980 (11 FERC Para. 61,279), as amended in Docket Nos. CP-781-123-021, et al., on December 15, 1983 (25 FERC Para. 61,384), as amended in DOE/ERA Opinion and Order No. 68 (Western Leg), issued December 13, 1984, in ERA Docket No. 84-15-NG (1 ERA Para. 70,580) is hereby further amended to permit Northwest Alaskan to make spot or short-term sales of authorized volumes not taken by Northwest Alaskan's long-term contract purchaser, Pacific Interstate Transmission Company, Inc. (PIT), to the extent that PIT does not take its full contract amount during any contract year, consistent with the terms set forth in the application submitted in this docket, as modified by this Order.

C. The authority to make spot market sales of natural gas contained in Ordering Paragraphs A and B of this Order is granted for a period of two years beginning with the date of first delivery of natural gas imported for sale on the spot market pursuant to this Order.

D. Northwest Alaskan shall notify the ERA in writing of the date of first delivery of natural gas imported under Ordering Paragraphs A and B above within two weeks after the date of the first delivery.

E. With respect to the spot market sales authorized by this Order, Northwest Alaskan shall file with the ERA in the month following each calendar quarter, quarterly reports showing, by month, whether spot sales have been made, and if so, the details of each spot sale. The details reported shall include the purchase and sales price, volumes, contract adjustment and take provisions, duration of the agreement, ultimate sellers and purchasers, and markets served.

F. The motions for leave to intervene, as set forth in this Opinion and Order, are hereby granted, subject to the administrative procedures in 10 CFR Part 590, provided that participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their motions 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.

Further, the late answer filed by Pan-Alberta Eas Ltd. is hereby accepted and is included in the official record of this proceeding.

Issued in Washington, D.C., February 26, 1985.

--Footnotes--

1/ On February 15, 1984, the Secretary of Energy in Delegation Order No. 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 Alaska Natural Gas Transportation System (49 FR 6690, February 22, 1984).

2/ In separate proceedings, the ERA removed certain conditions and extended the terms of Northwest Alaskan's existing authorizations to October 31, 2002 (Eastern Leg), and October 31, 2001 (Western Leg), in DOE/ERA Opinion and Order Nos. 67 and 68, respectively, issued on December 13, 1984. See 1 ERA Para. 70,579 and Para. 70,580.

3/ 49 FR 45643, November 19, 1984.

4/ Intervenors are:

United Gas Pipe Line Company

Inter-City Gas Corporation

Pan-Alberta Gas Ltd.

Panhandle Eastern Pipe Line Company

El Paso Natural Gas Company

Pacific Gas Transmission Company

Northern Border Pipeline Company

Pacific Interstate Transmission Company

Northern Natural Gas Company, Division of InterNorth, Inc.

Pacific Lighting Gas Company

Southern California Gas Supply Company

Transwestern Pipeline Company

5/ 49 FR 6684, February 22, 1984.

6/ 15 U.S.C. Sec. 717b.

7/ In *Increasing Competition in the Natural Gas Market; Second Report Required by Section 123 of the Natural Gas Policy Act of 1978*, submitted in January 1985, the DOE observed that an active spot market will allow the natural gas market to allocate risks efficiently and will help minimize price and supply fluctuations as the market moves from a tightly regulated environment towards fully competitive market conditions. See Summary, pp. S-1 and S-5, and Chapter 6, p. 75.

8/ *Op. cit.*, 6687.

9/ The DOE has determined that, because existing pipeline facilities will be used, granting authorization to import and export the requested volumes of natural gas is clearly not a Federal action significantly affecting the quality of the human environment within the meaning the National Environmental Policy Act (42 U.S.C. 4321, et seq.) and therefore an environmental impact statement or environmental assessment is not required.