

Cited as "1 ERA Para. 70,586"

Midwestern Gas Transmission Company (ERA Docket No. 81-32-NG), February 26, 1985.

Order Providing Opportunity for Additional Comments and to Request Additional Procedures

I. Background

On July 12, 1984, the Economic Regulatory Administration (ERA) issued a conditional opinion and order (Order No. 57) to Midwestern Gas Transmission Company (Midwestern) extending the term of its existing authorization to import natural gas from TransCanada PipeLines Limited (TransCanada).^{1/} This order matched the term and volume provisions in TransCanada's new Canadian export License No. GL-89 issued by the Canadian National Energy Board (NEB).^{2/} A conditional rather than final order was issued at the request of Midwestern to preserve several favorable amendments to its supply contracts with TransCanada while further negotiations were underway to make its import arrangement fully conform to the policy guidelines with respect to the pricing provisions.^{3/}

In addition to reducing the volumes over the term of the arrangement consistent with the NEB decision, the contract amendments gave Midwestern the right, subject to certain notice provisions, to reduce the daily contract quantity by as much as 51,945 Mcf effective November 1, 1984, 50,590 Mcf effective November 1, 1985, and up to the outstanding contract quantity effective December 15, 1985.

Other amendments allowed Midwestern to reduce its current obligation to purchase minimum volumes from a minimum annual quantity equal to 75 percent of the daily contract quantity to 50 percent of the annual contract quantity for each of the three consecutive contract years for the three contracts (Nos. 1, 2 and 1) ending October 31, 1985. Also, effective November 1, 1983, the payment obligation will be 50 percent of the minimum annual quantity at contract prices. Take-or-pay payments by Midwestern may be deferred for four years upon payment of interest on the amount due and it has make-up rights concerning the take-or-pay volumes of gas.

These amendments, preserved by the conditional order, contributed to the greater flexibility of Midwestern's import arrangement. However, since negotiations on the import price and pricing provisions had not been completed, Order No. 57 was conditioned on Midwestern furnishing to the ERA by

June 1, 1985, an acceptable demonstration that its import arrangement had been amended so as to be competitive and market-responsive within the meaning of the policy guidelines.

On January 25, 1985, Midwestern filed and served on the parties an application to remove the condition from Order No. 57 based upon the provisions of agreements executed on October 31, 1984, (the October agreement) and on November 16, 1984, (the November agreement) amending Contract No. 1 with TransCanada. Copies of the agreements were submitted with the application. Midwestern states in its request that the October agreement mirrors the amendment submitted with its second amendment to its import application filed on February 21, 1984, and incorporates into Contract No. 1 all the provisions described above and considered by the ERA in Opinion and Order No. 57.

The November agreement became effective November 1, 1984, and supersedes those provisions in the October agreement pertaining to pricing and minimum takes which were operative only for the period between November 1, 1982, and October 31, 1984. In the November agreement Midwestern and TransCanada agreed to restructure their contract price as permitted by Canada's new export pricing policy. Midwestern has now negotiated a two-part demand-commodity pricing formula.

The monthly demand charge will be \$15.20834 (U.S.) per Mcf of the daily contract quantity. This represents about \$.50 (U.S.) of the price for each Mcf of purchased gas at 100 percent of daily contract quantity and about \$.71 per Mcf at 70 percent of daily contract quantity. This demand charge can be adjusted for contract years starting November 1, 1985, and thereafter, to reflect changes in allowable transportation costs of the gas to the Canadian border which comprise the demand charge.

The following table shows the commodity charge which varies seasonally based on load factor and differentiation between volumes of gas purchased for resale to ANR Pipeline Company (ANR), Midwestern's largest customer which has other sources of gas, and gas purchased to meet Midwestern's other requirements.

For Gas Purchased For Resale To ANR Under Rate Schedule CD-2

	Summer	Winter
Daily Takes	Commodity	Commodity
as Percent of	Charge	Charge
Daily Contract Quantity	(Per MMBtu)	(Per MMBtu)

Up to 70% ...	\$2.63	\$2.63
70% to 80%...	\$2.80	\$3.34
80% to 100% ...	\$2.80	\$4.25

For Gas Purchased For Other Requirements

Daily Takes as Percent of Daily Contract Quantity	Summer	Winter
	Commodity Charge (Per MMBtu)	Commodity Charge (Per MMBtu)
Up to 70% ...	\$2.63	\$2.63
70% to 100% ...	\$2.80	\$3.34
Supplemental Daily Volumes ...		\$4.25

Combining the commodity charge of \$2.63 with \$.71 (the demand charge at 70 percent load factor) produces a 50 percent load factor price of \$3.34 per Mcf for gas purchased after November 1, 1984, compared to \$4.40 per Mcf prior to the November agreement. The new commodity charges are subject to adjustment to the extent that the contractually defined Alternate Fuels Price Index (based on gas and fuel oil prices in Midwestern's marketing area) varies by more than five percent from a base for October 1984.

In addition to the change in the pricing provisions, Midwestern cites the following contract changes which help make the amended import arrangement more market-competitive and flexible:

1. Either party may require that the pricing and price adjustment provisions (except for certain components of the demand charge factor) for any such contract year be determined by renegotiation or, failing agreement, by arbitration.

2. Under the contracts as changed by the October amendments, Midwestern would have had to take and pay for (without makeup rights) 50 percent of the annual quantity and, commencing November 1, 1985, to take or pay for (with makeup rights) the difference between 50 percent and 75 percent of the annual contract quantity. Under the new provisions, commencing November 1, 1984, there are no such obligations.

3. Under the new and old pricing provisions Midwestern can apply over 50 percent of the annual contract quantity to make up presently accumulated take-or-pay obligations, but under the new provisions, Midwestern additionally is allowed a two-for-one makeup for

takes in excess of 70 percent.

II. Opportunity for Further Comment and to Request Additional Procedures

At this point, the issue in this proceeding is the competitiveness of the import arrangement over the term of the contract, particularly with respect to the pricing terms. However, in view of the 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. 57 that this opportunity would be afforded. Parties should review the arrangement, their earlier comments, and the ERA's responses in Order No. 57 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 present application and responses filed by the parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

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.S.T., March 29, 1985.

B. Any party wishing to respond to the comments submitted by March 29, 1985, should file and serve those responses no later than 4:30 p.m., E.S.T., April 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.

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

--Footnotes--

1/ DOE/ERA Opinion and Order No. 57, issued July 12, 1984, in ERA Docket No. 81-32-NG, Midwestern Gas Transmission Company (1 ERA Para. 70,568, Federal Energy Guidelines).

2/ The NEB Omnibus Export Decision of January 27, 1983, authorized TransCanada under License No. GL-89 to export to Midwestern natural gas pursuant to Contract No. 1 at a maximum daily rate of 223,000 Mcf from November 1, 1984, until October 31, 1990; 148,518 Mcf for the contract year ending October 31, 1991; and 74,259 Mcf for the contract year ending October 31, 1992. Delivery of make-up volumes is allowed for an additional year.

3/ Contract No. 1 is Midwestern's underlying supply contract. Without extension, it will expire December 15, 1985. Midwestern also imports, under separate authorizations, lesser volumes of gas from TransCanada under Contract Nos. 2, 3 and 4 which extend further in time and involve different terms. Contracts 1, 2 and 3 are affected by the instant application and contract amendments.