

Cited as "1 ERA Para. 70,590"

Northern Natural Gas Company, Division of InterNorth, Inc. (ERA Docket No. 82-11-NG), March 29, 1985.

DOE/ERA Opinion and Order No. 76

Order Amending Authorization to Import Natural Gas From Canada

I. Background

A. Original Application

On August 9, 1982, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act, to extend the term of its existing import authorization issued August 29, 1980,^{1/} for an additional two years from November 1, 1987, through October 31, 1989. Concurrently, Northern filed an application with the Federal Energy Regulatory Commission (FERC) in Docket No. CP80-22-003 to similarly extend a related authorization issued June 27, 1980.^{2/ 3/}

Under the ERA August 29, 1980, authorization, Northern may import from Consolidated Natural Gas Limited (Consolidated) up to approximately 200,000 Mcf per day and up to 73,000 MMcf per year through October 31, 1987, at a point on the U.S.-Canadian border near Emerson, Manitoba, minus whatever volumes it elects to import through the Eastern Leg of the Alaska Natural Gas Transportation System (ANGTS) at Monchy, Saskatchewan.^{4/} The Eastern Leg facilities of the ANGTS "prebuild" are owned and operated by the Northern Border Pipeline Company (Northern Border). Pursuant to the import authority granted by the FERC on June 27, 1980, Northern is authorized to import over the same term up to 100,000 Mcf per day of this gas through Northern Border's facilities.

On May 13, 1982, Northern and Consolidated executed an amending agreement that established the basis for the original applications in this and the related FERC docket. Among other changes, this contract amendment extended the term of the original contract for two years, through October 31, 1989. In light of the May 13, 1982, contract amendment, Northern requested authority to extend the term of the import through October 31, 1989. Specifically, the application filed with the ERA requested authority to import near Emerson up to 135,000 Mcf per day and up to 49,275 MMcf per year during the additional

two-year term minus the volumes Northern elects to import at Monchy. Northern requested that FERC authorize Northern to import at Monchy up to 67,500 Mcf per day over the same two-year term.

Northern proposed that the price for the gas would be the international border price set from time to time by the National Energy Board of Canada (NEB), which was \$4.94 (U.S.) per MMBtu at the time of application.

Previously, under DOE Delegation Order No. 0204-8, the FERC had jurisdiction under Section 3 of the Natural Gas Act to approve imports of gas from Canada for transportation through the Eastern Leg and Western Leg prebuild segments of the ANGTS. That jurisdiction has since been vested in the ERA by DOE Delegation Order No. 0204-11, issued in conjunction with the Secretary of Energy's new policy guidelines governing the import of natural gas.^{5/} On April 3, 1984, the ERA consolidated Northern's application that had been pending at the FERC with the ERA proceeding in Docket No. 82-11-NG.6/

B. Amended Application

On February 16, 1984, the ERA requested that all applicants with natural gas import applications pending before the ERA file supplements to their existing applications and explain whether their applications met or would require modification to meet the new policy guidelines.^{7/} On April 16, 1984, Northern filed a supplement to its application in this consolidated docket requesting ERA to defer action on its proposal while it renegotiated its natural gas purchase contract with Consolidated. Those negotiations resulted in amendments to the gas purchase agreement which were executed November 1, 1984. Subsequently, on December 10, 1984, Northern filed a second supplemental application ^{8/} requesting that the ERA (1) find the Northern and Consolidated gas purchase agreement, as amended, consistent with the policy guidelines; (2) grant the requested extension; and (3) take expedited action on this application because Northern would otherwise be restricted to 150,000 Mcf per day (the limit previously established by the NEB) and the increased supply was needed in Northern's temperature sensitive markets.^{9/}

On December 24, 1984, Northern filed a third supplement requesting an interim emergency order to amend its current import authorization to permit it immediately to increase its imports from 150,000 Mcf per day to 200,000 Mcf per day until the ERA issued a final decision on the December 10, 1984, supplement to its application.

By letter dated December 29, 1984, the ERA notified Northern that an emergency interim amendment was unnecessary because the FERC and ERA orders

issued June 27, 1980, and August 29, 1980, respectively, granted Northern authority to import a maximum daily volume of 200,000 Mcf over the entire term of the authorization. On January 4, 1985, the ERA issued a Federal Register notice which amended its previous notice of Northern's December 10, supplement to extend the public comment period 10 days to January 21, 1985, to allow a full 30 days for comments on the requested extension.

Under the November 1, 1984, amended contract, commencing with U.S. and Canadian regulatory approvals, the purchase price in effect during the 1984-85 contract year will be \$3.50 (U.S.) per MMBtu for all imported volumes up to 27.375 Bcf. For all volumes taken above that level the price will be \$2.70 (U.S.) per MMBtu provided Northern has satisfied its minimum annual take-and-pay obligation of 40.15 Bcf.10/ In future years, the price of the gas is to be renegotiated annually. Future take-and-pay volumes will also be subjected to annual renegotiation. The revised agreement provides that negotiations among the parties concerning price and volume obligations will be based on the objective of achieving levels which would enable Northern to resell the gas in its markets and provide Consolidated with a fair price and reasonable level of sales. If the parties are unable to reach an agreement by September 15 of a particular year, the matter will be submitted to arbitration. The amendment further requires that not less than 50 percent of the volumes imported during the 1984-85 contract year shall be delivered at Emerson.

In support of its application, Northern states the renegotiated provisions ensure an arrangement that is sufficiently flexible to permit pricing and volume adjustments as required by market conditions and available competing fuels, and is therefore consistent with the Secretary of Energy's gas import policy.

II. Intervenors

The ERA and the FERC received 34 motions to intervene and notices of intervention in response to their September 22, and October 4, 1982, Federal Register notices of Northern's initial application. These are identified in Appendix A. Two of those who filed for intervention, Valero Transmission Company (Valero) and Delhi Gas Pipeline Corporation (Delhi), opposed the application. In addition, Valero requested a trial-type hearing.

Valero is an intrastate pipeline engaged in the transmission and sale of natural gas for resale within the State of Texas. Delhi is an intrastate pipeline which operates primarily in Texas and Oklahoma. In their petitions, Valero and Delhi raised a number of issues related to need for the gas, to the

applicant's petition for blanket authorization from the FERC to make off-system sales in 1982 and 1983, and to the impact of off-system sales on intrastate pipelines.

Algonquin Gas Transmission Company (Algonquin), an interstate pipeline serving the northeast United States, did not oppose the application but indicated concern that the arrangement might have an impact on Algonquin's import project pending before the ERA in Docket No. 81-02-NG. At the time Algonquin expressed this concern, the NEB was conducting proceedings to determine the amount of surplus Canadian gas available for export to the year 2000 in order to make decisions concerning applications for export licenses before it, including one filed by Algonquin's supplier, Pan-Alberta Gas Ltd. (Pan-Alberta). Algonquin observed that its import project might be adversely affected if the levels of exportable surplus gas were not adequate to satisfy all export license requests. This issue is now moot since the NEB in its January 1983 omnibus export decision approved Pan-Alberta's proposed export to Algonquin.

In its December 21, 1984, notice of Northern's second supplement to its application, the ERA invited comments, protests and additional motions to intervene to be filed by January 12, 1985. The ERA's January 11, 1985, notice extended the filing period to January 21, 1985. The December 21 notice requested that previous intervenors review their positions and update their earlier filings to indicate whether the issues raised at that time were still germane to Northern's renegotiated contract. Parties that wanted additional proceedings, even if a previous request had been made, were instructed to include the request for the particular proceeding in their response to the notices.

Five previous intervenors and one new intervenor submitted comments to the December 21, 1984, and January 11, 1985, notices.¹¹ All support Northern's revised import proposal. No further motions to intervene, notices of intervention or protests to the granting of the application were filed. The ERA did not receive any requests for additional procedures.

In the absence of any additional comments or requests for additional procedures from Valero or Delhi, the ERA concludes that the issues they raised are no longer relevant in this proceeding. The ERA assumes, therefore, that the only comments presently relevant to this proceeding are those received in response to the December 21, 1984, notice. Those comments support the application.

III. Decision

Northern's application has been reviewed to determine if it conforms with 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." 12/ In making this finding, the Administrator is guided by the Secretary of Energy's natural gas import policy.13/ Under this policy, 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.

All intervenors responding to the notice of Northern's November 1, 1984, contract amendment support it. The amended purchase agreement provides that the price of the gas and the take-and-pay volumes will be subject to annual renegotiation after the 1984-85 contract year. One of the expressed objectives of the annual renegotiations is to achieve prices and volume obligations that enable Northern to resell the gas in its markets. Provision for these adjustments demonstrates that this import arrangement is reasonable, flexible, and will be market-competitive over the proposed term of the authorization.

The question of the need for an import is answered by its competitiveness. The amended arrangement has been found to be competitive, and no intervenor has challenged the need for the gas. The security of this import is not a major issue because natural gas from Canada has been imported into a wide range of domestic markets for many years and no issue concerning Canada's reliability as a supplier has been raised.

Northern's proposed arrangement for the continued and extended importation of natural gas conforms with the Secretary's policy guidelines. After taking into consideration all information in the record of this proceeding, I find that the amended authorization requested by Northern is not inconsistent with the public interest and should be granted.14/

Order

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

A. The import authorizations previously granted to Northern Natural Gas Company, Division of Inter-North, Inc. (Northern) by the ERA in DOE/ERA Opinion and Order No. 19 issued August 24, 1980, in Docket No. 79-24-NG, and by the FERC in its order issued July 27, 1980, in Docket No. CP80-22, which permit the importation of a combined total of up to 200,000 Mcf per day of natural gas at Emerson, Manitoba, and Monchy, Saskatchewan, through October

31, 1987, are hereby amended to extend the term of the import authorizations, now consolidated, from November 1, 1987, through October 31, 1989, in accordance with the amended application submitted December 10, 1984, in this docket.

B. During the period November 1, 1987, through October 31, 1989, Northern is authorized to import up to 135,000 Mcf per day and 49,275 MMcf per year at Emerson, minus the volumes it elects to import, up to a daily maximum of 67,500 Mcf, at Monchy through the prebuilt facilities of the Alaska Natural Gas Transportation System, in accordance with the volumes Northern has contracted to purchase.

C. The above-referenced orders are further amended to incorporate Northern's November 1, 1984, revisions, to its gas purchase contract with Consolidated for previously authorized volumes.

D. With respect to the natural gas authorized by this Order, Northern shall file with the ERA in the month following each calendar quarter, quarterly reports showing, by month, the quantities of gas imported at points on the international boundary near Emerson, Manitoba, and Monchy, Saskatchewan, respectively, and the average price, on an MMBtu basis, paid for such gas.

E. The motions 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 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.

Issued in Washington, D.C. March 29, 1985.

--Footnotes--

1/ Northern Natural Gas Company, DOE/ERA Opinion and Order 19, (1 ERA Para. 70,518).

2/ Docket No. CP80-22, 11 FERC Para. 61,340.

3/ Notices of Northern's ERA and FERC applications were published in the Federal Register on September 22, 1982 (47 FR 41846), and October 4, 1982 (47 FR 43775), respectively.

4/ Consolidated's export license granted by the Canadian National Energy Board in December 1979 permits the sale to Northern of a maximum of 200,000 Mcf per day at Monchy through October 31, 1984, after which daily quantities are phased down in the final three years of the license to provide for exports of 150,000 Mcf, 100,000 Mcf, and 50,000 Mcf, respectively.

5/ 49 FR 6648, February 22, 1984.

6/ 1 ERA Para. 70,562, Federal Energy Guidelines.

7/ 49 FR 6692, February 22, 1984.

8/ Notice of Northern's filing was published in the Federal Register on December 21, 1984 (49 FR 49709). It limited the period for new interventions and comments on the supplement to 20 days to accommodate Northern's request for expedited action.

9/ The NEB issued an order to Consolidated in January 1983 which increased the maximum daily export quantities for sale to Northern in the three contract years November 1, 1984 through October 31, 1987, to 200,000 Mcf, 160,000 Mcf and 135,000 Mcf, respectively, and extended the duration of the exports for two years. It was conditioned upon the ERA's approval of Northern's application in this docket by January 31, 1985.

10/ The NEB, in its December 1984 decision on Consolidated's request to amend its export licenses GL-61 and GL-75 for sale to Northern, consistent with the terms of the November 1, 1984 Amending Agreement between the parties, approved the new two-tiered export price for the contract year November 1, 1984 through October 31, 1985, on condition that the average annual price not be less than the current Toronto city-gate wholesale price of \$3.15 (U.S.) per MMBtu. All non-pricing provisions in the agreement were approved by the NEB.

11/ The previous intervenors who responded are: (1) Inter-City Gas Corporation; (2) Iowa Public Service Co.; (3) Minnesota Gas Company; (4) Northern States Power Co. (Minnesota); and (5) Northern States Power Co. (Wisconsin). Lake Superior District Power Co. filed a petition to intervene for the first time.

12/ 15 U.S.C. Sec. 717b.

13/ 49 FR 6684, February 22, 1984.

14/ Because existing pipeline facilities will be used the DOE has

determined that granting this application is not a federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, et seq.) and therefore an environmental impact statement of environmental assessment is not required.

Appendix A

Algonquin Gas Transmission Co.
Boundary Gas Co.
Delhi Gas Pipeline Corp.
Great Lakes Gas Transmission Co.
Inter-City Gas Corporation
Interstate Power Co.
Iowa Electric Light & Power Co.
Iowa-Illinois Gas and Electric
Iowa Public Service Company
Iowa Southern Utilities Co.
Iowa State Commerce Commission
Metropolitan Utilities District of Omaha
Michigan Power Company
Michigan-Wisconsin Pipeline Co.
Minnesota Gas Company
Minnesota Public Service Commission
Minnesota Municipal Utilities Association
Natural Gas Pipeline Co. of America
Northern Border Pipeline Company
Northern Illinois Gas Co.
Northern States Power Company (Minnesota)
Northern States Power Company (Wisconsin)
Northwest Alaskan Pipeline Co.
Northwestern Public Service Co.
Process Gas Consumers Group
Panhandle Eastern Pipeline Co.
Public Service Commission of Wisconsin South Dakota Public Utilities
Commission
Terra Chemicals International, Inc.
Transcontinental Gas Pipeline Corp.
Trans-Canada Pipeline Ltd.
Valero Transmission Company
Wisconsin Gas Company
Wisconsin Power & Light Company