Cited as "1 ERA Para. 70,591"

Pacific Gas Transmission Company (ERA Docket No. 82-16-NG), April 2, 1985.

DOE/ERA Opinion and Order No. 63A

Final Order Granting Amendments to Authorization to Import Natural Gas from Canada

I. Background

On November 1, 1984, in DOE/ERA Opinion and Order No. 63 (Order No. 63),1/ the Economic Regulatory Administration (ERA) conditionally authorized the Pacific Gas Transmission Company (PGT) to import from Alberta and Southern Gas Company, Ltd. (Alberta and Southern) 1023 MMcf of natural gas per day through October 31, 1993,2/ subject to a showing prior to the flow of the gas that the import arrangement, as then structured, is competitive in Pacific Gas and Electric Company (PG&E) markets. The ERA noted that no party had questioned the need for the gas or raised the issue of security of supply. "What the parties have questioned is whether Canadian gas is the appropriate choice for meeting those needs [of the California market] if it is not competitive in the markets served." 3/ Accordingly, the ERA stated that the competitiveness mf PGT's import arrangement would be fully evaluated before final action was taken and that the parties would be given an opportunity to comment on all aspects of the import arrangement and to request additional procedures when PGT applied to make the conditional authorization final.

On December 24, 1984, PGT filed a supplement to the original application requesting final approval of the additional volumes that were conditionally authorized in Order No. 63. In the supplement, PGT stated that it proposed to apply the terms of its renegotiated contract with Alberta and Southern for currently authorized volumes to the additional volumes conditionally authorized. Those terms, submitted as part of an October 1, 1984, report by PGT to this agency, were effective November 1, 1984, for currently authorized volumes. The renegotiated contract provided for a commodity rate at the international border of $2.99 (U.S.) per MMBtu which is subject to semiannual review and adjustment, plus a demand charge based on actually incurred costs to transportation and shipping from within Canada to the export point. PGT projects that this price structure will result in an average delivered price at the California border of $3.63 (U.S.) per MMBtu. The renegotiated contract 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.

PGT asserted that the renegotiated contract's reduced minimum purchase obligations and revised price structure would enable it to market the requested additional volumes of Canadian gas competitively. PGT cited two factors in its renegotiated contract that assure competitiveness for all future purchases over the life of the import arrangement: (1) the provision 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.

In a procedural order issued January 29, 1985, the ERA provided the opportunity for parties to comment on the competitiveness of PGT's revised contract and on all aspects of PGT's import arrangement. Parties who had opposed PGT's application were notified that they must restate their opposition to the import arrangement if they were still opposed to PGT's request. The parties were also given the opportunity to request additional procedures. Responses were due February 28, 1985, and answers were due March 15, 1985.

On March 3, 1985, PGT filed a report with the ERA of a reduction in the commodity rate for Canadian gas from $2.99 to $2.92 per MMBtu, effective April 1, 1985. The price reduction resulted from the semiannual price review and redetermination called for in the gas sale contract. PGT projected that the pricing revision would result in a delivered price for Canadian gas at the California border of $3.55 per MMBtu.

II. Response To Procedural Order

Two responses were received to the January 29, 1985, procedural order. One was by the El Paso Natural Gas Company (El Paso) and the other by the Railroad Commission of Texas (RCT). Neither El Paso nor RCT contend that PGT's import arrangement as now structured is not competitive. However, both El Paso and RCT note that PGT's revised contract with Alberta and Southern was approved by the Canadian National Energy Board for a one-year period only, subject to yearly extensions. They also noted it was subject to review and concurrence by the affected Canadian gas producers, and could be changed as a result of the semiannual price review and redetermination provision in the revised contract. Because of the potential for further changes, El Paso and RCT requested that the ERA condition its final approval of PGT's import arrangement so that any significant changes in the contractual terms underlying PGT's importation of Canadian gas would not become effective until after a public notice and comment period and a finding that such changes were not inconsistent with the public interest.

PGT, its affiliate PG&E, and the Public Utilities Commission of the State of California (CPUC) filed answers supporting issuance of an unconditional final order and opposing El Paso's and RCT's request for conditions requiring further review of PGT's authorization in the future. The CPUC cites the elimination of minimum physical take provisions, the reduction in take-or-pay obligations to the 50 percent level, and contract provisions providing for a competitive price through adjustments based on domestic pipeline prices, as evidence that PGT's import arrangement as now structured will remain fair and competitive. PGT and PG&E assert that there is a conflict between El Paso's approach, wherein each price redetermination would be subjected to detailed regulatory review, and the DOE's policy guidelines which encourage provisions that allow price adjustments during the life of an import agreement as evidence of the competitiveness of the arrangement. PGT also states that its obligation under Section 590.407 of the ERA's administrative procedures to report any changes in its import arrangement ensures that the public interest is adequately protected.

III.Decision

PGT's application has been evaluated to determine if the arrangement 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 it "will not be consistent with the public interest." 4/ The Administrator is guided by the Secretary of Energy's policy relating to the regulation of natural gas imports.5/ Under these policy guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

In Order No. 63, the ERA authorized PGT to import the additional volumes of Canadian natural gas, subject to a showing prior to the flow of the gas on November 1, 1985, that PGT's import arrangement, as then structured, is competitive in the California market. Accordingly, the only issue remaining to be resolved is the competitiveness of PGT's import arrangement over the term of the contractual arrangement.

The substantial reduction in PGT's take-or-pay obligations, the elimination of its minimum physical take obligations, the reduction in the price of the Canadian gas imported by PGT, and the flexibility provided by the semiannual review and redetermination provisions amply demonstrate that PGT's import arrangement is competitive and market-responsive, and can be expected to remain so over the term of the underlying contract.

Although El Paso and RCT have requested that the ERA condition this authorization to require opportunity to comment before any significant changes in PGT's contractual arrangements become effective, such conditions are viewed as unnecessary and as an obstacle to maintaining a market-responsive import arrangement. The revised gas sales contract allows PGT to negotiate price changes, as was recently done to reduce the commodity rate, in order for the Canadian gas to remain competitive. It is not our intention to intervene in the negotiation of such contract adjustments so long as PGT is operating within the terms of its existing import arrangement.

Should any substantive contract amendments be made at a future date affecting the facts or circumstances upon which PGT's authorization is based, PGT has a continuing obligation, under the ERA's administrative procedures, to report such amendments to the ERA for review. Section 590.407 emphasizes that whenever such changes are contrary to or otherwise not permitted by the existing authorization, an application to amend the existing authorization must be filed. Accordingly, the conditions requested by El Paso and RCT are unnecessary and their requests for them are denied.

Finally, all opposition to PGT's proposed extension appears to have ended. The arrangement apparently now satisfies all of the parties.

After taking into consideration all information in the record of this proceeding, I find that the condition in Order No. 63 has been met--that PGT has demonstrated that its import arrangement, as now structured, is competitive in the market served. Therefore, granting the amendment as requested is not inconsistent with the public interest.

Order

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

A. The import authorization previously issued by the Federal Power Commission to Pacific Gas Transmission Company (PGT) under Docket Nos. G-17350, G-17351 and G-17352 on August 5, 1960 (24 FPC 134), as amended in Docket Nos. CP 65-213, CP 65-214 and CP 65-215 on June 14, 1966 (35 FPC 1003), as amended in Docket Nos. CP 67-187 and CP 67-188 on October 30, 1968 (40 FPC 1147), and as amended in Docket Nos. CP 69-346 and CP 69-347 on March 13, 1970 (43 FPC 418), is hereby further amended to increase the authorized volumes to permit PGT to import up to 1023 MMcf mf Canadian natural gas per day for the period November 1, 1985 through October 31, 1993.

B. The above-referenced orders are further amended to incorporate PGT's November 1, 1984, revisions to its gas sale contract with Alberta and Southern Gas Company, Ltd. for previously authorized volumes and for volumes authorized by this order.

C. With respect to the natural gas authorized to be imported by this order, PGT shall file with the ERA in the month following each calendar quarter, quarterly reports showing, by month, the quantities of gas imported, the average price paid per MMBtu for both the demand and commodity components, and the average delivered price at the California border per MMBtu.

Issued in Washington, D.C., April 2, 1985.

--Footnotes--

1/ Pacific Gas Transmission Company, DOE/ERA Opinion and Order No. 63, issued November 1, 1984 (1 ERA Para. 70,574).

2/ Under FERC Docket Nos. CP 69-346 and CP 69-347, March 13, 1970 (43 FPC 418), PGT is authorized to import the following volumes:

Period	Annual Volumes*/ (MMcf)	Average Daily Volumes (MMcf/d)
present to 10/31/85 ...	373,500	1023
11/1/85 to 10/31/86 ...	305,870	838
11/1/86 to 10/31/89...	153,300	420
11/1/89 to 10/31/93 ...	77,745	213

PGT applied for the following incremental volumes:

Period	Annual Volumes*/ (MMcf)	Average Daily Volumes (MMcf/d)
present to 10/31/85 ...	---	---
11/1/85 to 10/31/86...	67,525	185
11/1/86 to 10/31/89 ...	220,095	603
11/1/89 to 10/31/93...	295,650	810

*/ Annual volumes were determined by multiplying average daily volumes by

365, using the more exact average daily volume of 1023.3 MMcf.

3/ See supra note 1.

4/ 15 U.S.C. Sec. 717b.

5/ 49 FR 6684, February 22, 1984.