Cited as "1 ERA Para. 70,592"

Midwestern Gas Transmission Company (ERA Docket No. 81-32-NG), April 18, 1985.

DOE/ERA Opinion and Order No. 57A

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

## Background

On July 12, 1984, in DOE/ERA Opinion and Order No. 57 (Order No. 57), the Economic Regulatory Administration (ERA) conditionally extended the term of the Midwestern Gas Transmission Company's (Midwestern) existing authorization to import Canadian natural gas from TransCanada PipeLines Limited (TransCanada) subject to submission of an amendment by June 1, 1985, demonstrating that the import arrangement is competitive and not inconsistent with the public interest.1/

In Order No. 57, the ERA amended Midwestern's existing import authorization to extend the term of the authorization to October 31, 1992, and allowed an additional year, until October 31, 1993, to import any quantities of gas paid for but not taken during the term. Order No. 57 also amended Midwestern's existing gas import volume authorization to permit Midwestern to import from Canada a maximum of 222,360 Mcf per day through October 31, 1990, a maximum of 148,518 Mcf per day for the contract year commencing November 1, 1990, and a maximum of 74,259 Mcf per day for the contract year commencing November 1, 1991, in accordance with the provisions of its contract No. 1, as amended.2/ The order established as maximum annual contract quantities 74,000 MMcf through October 31, 1990, 49,284 MMcf from November 1, 1990, through October 31, 1991, and 24,644 MMcf from November 1, 1991, through October 31, 1992.

The contract amendments authorized in Order No. 57 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. Further, the 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 3) ending October 31,

1985. Also, effective November 1, 1983, the payment obligation would 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 Midwestern has make-up rights concerning the take-or-pay volumes of gas.

These amendments, preserved by the conditional order, contribute to greater flexibility in Midwestern's import arrangement. However, since negotiations on the import price and pricing provisions had not been completed, Order No. 57 was conditioned, at Midwestern's request, 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 Department of Energy's gas import policy guidelines.3/

On January 25, 1985, Midwestern filed 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. Midwestern stated that the October agreement mirrors the contract amendment submitted with its second amendment to its import application filed on February 21, 1984, and incorporates into contract No. 1 all the provisions approved by the ERA in 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 now has a two-part demand-commodity pricing formula.

The monthly demand charge will be $15.00834 (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 will be adjusted on a monthly basis 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

| Daily Takes as Percent of Daily Contract Quantity | Summer Commodity Charge (Per MMBtu) | Winter Commodity Charge (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 Commodity Charge (Per MMBtu) | Winter 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 70 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 price 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 contract year be determined by renegotiation or, failing agreement, by arbitration.

2. Commencing November 1, 1984, there are no take-and-pay or take-or-pay provisions.

3. Midwestern can apply over 50 percent of the annual contract quantity to make up presently accumulated take-or-pay obligations, and additionally is allowed a two-for-one makeup for takes in excess of 70 percent.

On February 26, 1985, the ERA issued a procedural order providing all parties the opportunity to comment and request additional procedures on all aspects of the amended import arrangement with respect to the competitiveness of the new pricing provisions and conformance with the other criteria in the Department of Energy's import policy guidelines.

## II. Response to Procedural Order

One response was received. It was from Inter-City Gas Corporation (Inter-City). Inter-City stated that Midwestern's pricing amendments will be beneficial and effect a fairly substantial price reduction for gas supplies it purchases from Midwestern. Although Inter-City urged more effective price competition between Canadian natural gas and the mix of fuels available in its market area, it concluded that the amended pricing provisions represent a positive step in the right direction and bring Midwestern's price closer to those of alternative fuels in the area. Inter-City urged the ERA to approve Midwestern's application.

## III. Decision

Midwestern's application to remove the condition from Order No. 57 has been evaluated to determine if the import arrangement as amended 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 Department of Energy's stated policy relating to the regulation of natural gas imports.5/ The guidelines prescribed in the policy statement emphasize that the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

The pricing provisions negotiated by Midwestern in its contracts with TransCanada substantially reduce the price of the imported gas and provide a mechanism for scheduled review and adjustment of the new two-part, demand-commodity pricing structure. These conform to the intent of the competitiveness requirement of the guidelines. The renegotiated pricing provisions coupled with the amendments approved in Order No. 57 give Midwestern a competitive and market-responsive long-term import arrangement.

Furthermore, only one response to ERA's request for comments was filed. This was by Inter-City, a customer of Midwestern, who actively supports the amendment. The fact that no unfavorable comments were received from any party indicates that the parties are satisfied with the proposed extension of the amended import arrangement.

After taking into consideration all information in the record of this proceeding, it is concluded that the condition in Order No. 57 has been met--that Midwestern has demonstrated that its import arrangement, as now structured, is competitive and market-responsive and should continue so over the term. Therefore, granting the extension as amended 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 Midwestern Gas Transmission Company (Midwestern) under consolidated Docket Nos. G-18313, G-18314, G-18315, and G-18316 on October 31, 1959 (22 FPC 775), is hereby amended to extend the authorization to October 31, 1992. Additional authority is granted, commencing on November 1, 1992, and ending on October 31, 1993, to import quantities of gas paid for but not taken during the term of this authorization.

B. The authorization issued to Midwestern under Docket No. G-18314, on August 10, 1965 (34 FPC 457), is hereby amended to permit Midwestern to import from Canada a maximum of 222,360 Mcf per day through October 31, 1990; a maximum of 148,518 Mcf per day for the contract year commencing November 1, 1990, and a maximum of 74,259 Mcf per day for the contract year commencing November 1, 1991, in accordance with the provisions of its contract No. 1, as amended. The maximum annual contract quantity shall be 74,000 MMcf through October 31, 1990, 49,284 MMcf from November 1, 1990, through October 31, 1991, and 24,644 MMcf from November 1, 1991, through October 31, 1992.

C. The orders referenced in ordering paragraphs A and B above are further amended to incorporate Midwestern's October 31, 1984, and November 16, 1984, agreements revising its gas purchase contract Nos. 1, 2 and 3 with TransCanada PipeLines Limited.

D. With respect to the natural gas authorized to be imported, Midwestern shall file with the ERA in the month following each calendar quarter, quarterly reports showing, by month, the quantities of gas imported and the average price paid per MMBtu for both the demand and commodity components.

Issued in Washington, D.C., April 18, 1985.

--Footnotes--

1/ Midwestern Gas Transmission Company, DOE/ERA Opinion and Order No. 57, issued July 12, 1984 (1 ERA Para. 70,568).

2/ 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.

3/ 49 FR 6684, February 22, 1984.

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

5/ See supra note 3.