Cited as "1 ERA Para. 70,595"

Southeastern Michigan Gas Company (ERA Docket No. 84-20-NG), April 29, 1985.

DOE/ERA Opinion and Order No. 79

Order Authorizing the Importation of Natural Gas from Canada

I. Background

On December 21, 1984, Southeastern Michigan Gas Company (Southeastern) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act, for authorization to import up to 9 Bcf of Canadian gas over a two-year period that would begin on March 1, 1985, and end on February 28, 1987. The gas would be purchased from Northridge Petroleum Marketing, Inc. (Northridge) on a best-efforts, interruptible basis pursuant to a gas purchase contract dated November 7, 1984, and a contract amendment filed April 1, 1985. The contract would be extended automatically in two-year increments.

Under the agreement, up to 20 MMcf of gas per day could be purchased with an annual limitation of 3 Bcf. Because the requested two-year authorization period (March 1, 1985--February 28, 1987) overlaps three complete or partial contract years,1/ the applicant is seeking authorization of up to 9 Bcf, the total possible amount available to Southeastern under the contract during the authorization period.

For the initial contract period ending November 1, 1985, the price of the gas would be $2.99 (U.S.) per Mcf. Sixty days before the end of the initial contract year, Southeastern and Northridge would meet to redetermine the purchase price, taking into consideration the prevailing market conditions of alternative sources of supply available to Southeastern. The parties, by mutual agreement, may redetermine the purchase price at any other time in response to market conditions.

Southeastern proposes to purchase the imported gas supplies for its general system supply for the benefit of all consumers receiving retail gas service in its service areas. It asserts that there is a need for the imported supplies to achieve the lowest reasonable cost of gas for consumers in its service areas, and to exert competitive pressure on its interstate domestic suppliers.

The imported gas would be produced in Alberta, Canada, from fields owned or controlled by five natural gas producing companies (Calco Resources Ltd., Lac Minerals Ltd., Paramount Resources Ltd., Signalta Resources Ltd., and Maynard Energy Inc.), or would be acquired by Northridge from such other sources within Canada as may be required from time to time. It is contemplated that Northridge would enter into agreements with NOVA, AN ALBERTA CORPORATION, and TransCanada PipeLines Limited (TransCanada) for the transportation of the gas from points of production through existing facilities to a point of delivery on the international boundary near Emerson, Manitoba, Canada. Southeastern proposes to enter into agreements with Great Lakes Gas Transmission Company (Great Lakes) and ANR Pipeline Company (ANR) for the receipt and redelivery of the gas to Southeastern at a new delivery point under construction by ANR in Columbus Township, Michigan. The new delivery point in Columbus Township is already under construction for purposes unrelated to this import. No final transportation agreements had been reached by the parties to the proposed arrangement at the time of filing.

Southeastern and Northridge executed an amending agreement to the gas purchase contract on March 28, 1985. The amending agreement, filed on April 1, 1985, as an amendment to Southeastern's pending application, modified the gas purchase contract 1) to lower the purchase price for the gas from $3.10 (U.S.) to $2.99 (U.S.) per Mcf during the first contract year; 2) to expand Southeastern's ability to renegotiate price in response to market conditions; and 3) to make contract termination an option at Southeastern's election, rather than automatic, in the event Southeastern loses its status as a Rate Schedule G-1 customer of Panhandle.

II. Procedural History

A notice of Southeastern's application was issued on January 11, 1985.2/ The notice invited protests and motions to intervene which were to be filed by February 19, 1985. Motions to intervene were filed by Central Illinois Light Company (CILCO), Pan-Alberta Gas Limited (Pan-Alberta), and Panhandle Eastern Pipeline Company (Panhandle).

CILCO, an Illinois electric and gas distributor who purchases 97 percent of its natural gas from Panhandle, supported Southeastern's application. Pan-Alberta, a Canadian supplier to Panhandle via Northwest Alaskan Pipeline Company (Northwest Alaskan) through the prebuild portion of the Alaska Natural Gas Transportation System (ANGTS), intervened in opposition to the application and stated that it has opposed the arrangement before the Canadian National Energy Board (NEB). Panhandle, Southeastern's primary gas supplier who purchases gas from both domestic sources and from Canada through the prebuild,

opposed the application and requested additional procedures, including a trial-type hearing, to determine the impact of the proposed import on the public interest and the adverse consequences to Panhandle's import arrangements, system operations, and Michigan consumers.

On February 27, 1985, Southeastern filed an answer in opposition to Panhandle's comments and request for additional procedures, and to Pan-Alberta's motion to intervene.

Because of the concerns raised by the parties and the request for additional procedures, a procedural order was issued on March 20, 1985, which allowed additional written comments to be submitted by March 29, 1985, scheduled a conference at which oral presentations could be made on April 3, 1985, and granted all motions to intervene.

Additional written comments were submitted by Panhandle and Southeastern on March 29, 1985. Panhandle reiterated its requests for a full trial-type hearing and related proceedings to permit evidence to be submitted and addressed by Panhandle.

Panhandle and Southeastern participated in the conference on April 3, 1985. Pan-Alberta attended the conference but did not participate in the proceeding. Both Panhandle and Southeastern made oral presentations. At the conference, Panhandle reiterated its request for a trial-type hearing. No new issues were raised in the additional written comments or at the conference. Panhandle acknowledged being served with the amendment to the purchase contract and expressed no concern over it.3/

III. Decision

Southeastern'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 has been a finding that the import "will not be consistent with the public interest." 4/ In making this finding, the Administrator of the ERA is guided by the statement of policy issued by the DOE relating to the regulation of natural gas imports.5/ Under this policy, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

During the course of this proceeding, the parties opposing the proposed import raised a number of issues, both as a basis for challenging the project's consistency with the public interest and as a basis for Panhandle's request for a trail-type hearing.

While professing that it is not adverse to competition, the major issue that Panhandle, and in part Pan-Alberta, raised is that previously approved long-term imports should not have to compete with short-term imports in the same market area. Panhandle is concerned that its sales to Southeastern will be displaced by the proposed import and it will then have to cut back its long-term supplies, including those from Pan-Alberta. Panhandle maintains that Southeastern is opportunistically taking advantage of a lower priced short-term import to displace its purchases from Panhandle, while at the same time continuing to rely on Panhandle as a long-term supply source. Panhandle feels that its other General Service customers may follow Southeastern's example and seek imports of their own to replace their purchases from Panhandle and the cumulative impact would result in a cutback of Panhandle's long-term supply sources.6/

Southeastern responded to Panhandle's allegations by stating that the "primary issue is not whether the Administration should avoid authorizing short-term imports of gas that is lower priced to protect long-term imports from competition. . . . Instead, we believe that ERA has often said that the primary issue is the competitiveness of the import. . . . Southeastern has shown that the proposed import is competitive today, and it is competitive in the future." 7/

Southeastern has indicated that if the Northridge import were not available it would seek supplies from sources other than Panhandle, as long as those supplies were cheaper than Panhandle's incremental costs. Southeastern is determined to diversify its supplies, and to that extent Panhandle will lose the sales represented by the Northridge import, whether or not the import is approved by the ERA.

The ERA concurs with Southeastern's response, that the competitiveness of the import is the prime concern. The policy of this agency is to promote competition, and the applicant's import brings new and positive competitive forces to its marketplace. Purchasers will avail themselves of short-term arrangements when they are competitive with available long-term arrangements. Panhandle has options available to it to meet competition, as do other pipelines. Panhandle has indicated that it is in fact pursuing an option to become more competitive. It "has begun a concerted effort to reduce its gas supply costs." 8/

Panhandle alleged that the proposed import will discourage Canadian suppliers from renegotiating existing contracts and negotiating new ones. However, the ERA is unpersuaded by this argument. The Canadian government and gas industry are moving to correct price disparities that have existed for the

past several years between U.S. and Canadian supplies serving U.S. markets. There has been no sign of reluctance by Canadian exporters to negotiate in response to competition, and it is unlikely that the competition from the Southeastern/Northridge arrangement will change this.

Panhandle claimed that, since neither Northridge nor Southeastern have firm transportation contracts in place, the import cannot be reliable. Southeastern responded that Panhandle had not explained how the lack of transportation contracts is relevant to a decision on whether the import is in the public interest. Further, it indicated that it expected to have transportation contracts in place by April 14, 1985.9/ It is the ERA's position that contracts for transportation of imported gas do not represent a relevant issue in deciding whether to approve import authorizations, since the ERA only authorizes the import of the gas and not the means of transporting that gas to market. Clearly, the gas will not flow under any arrangement or authorization if all the supply and transportation contracts are not in place.

Panhandle questioned the security of the import since there had been no showing that Northridge had entered into contracts to purchase the gas from the producers. Panhandle alleged that this lack of producer contracts makes the source of supply unreliable. The ERA has in past orders 10/ indicated that the security of the import supply is not a major issue when the gas is to be purchased on a short-term, best-efforts basis. Nothing that Panhandle has alleged leads the ERA to believe that this import is different from other short-term imports it has approved with regard to the issue of the security of supply.

Panhandle has contended that there is no need for this import which it cannot meet. As set forth in the gas import policy statement, the question of the need for an import is a function of its competitiveness, and Panhandle has not challenged the competitiveness of the proposed import, nor demonstrated why some criteria other than competitiveness should be used to evaluate need in this case.

Panhandle has indicated that because of this import and other purchases that Southeastern has made from suppliers other than Panhandle, Southeastern may lose its status as a General Service customer under Panhandle's interstate transportation tariff. This issue, to the extent it may have merit, is a matter for the Federal Energy Regulatory Commission rather than the ERA.

Southeastern's import arrangement fully comports with the public interest test established in the DOE's policy guidelines. The volumes will be imported on a best-efforts, interruptible basis and the only take-or-pay

obligation occurs in the event that the gas purchase contract is terminated when Southeastern has nominated volumes which Northridge has delivered to the intervening transporters. The flexibility of the import arrangement, along with the provisions for adjustment of the purchase price contained in the amended gas purchase contract, ensure that the gas will only be imported when the price is competitive in Southeastern's markets. The pricing flexibility and the other contract terms and conditions, taken together, demonstrate that the import arrangement will be sufficiently flexible to allow Southeastern to respond to its markets over the length of the contract.

In its written submission of March 29, 1985, and during the conference held on April 3, 1985, Panhandle renewed its request for a full trial-type hearing and related proceedings. It alleged that the ERA had no basis in the present record for granting this import authorization. Further, it maintained that the issues of the lack of transportation contracts and reliability of supply were still in dispute. As stated above, the existence or lack of contracts for transportation or contracted producer gas reserves are not relevant to the approval of this import authorization. Instead, the competitiveness of the import is the prime concern, and Panhandle failed to challenge the competitiveness of Southeastern's proposal. As Panhandle failed to demonstrate, in accordance with ERA's procedural rules, that there are factual issues which are genuinely in dispute, relevant and material to the decision, and further failed to show that a trail-type hearing is necessary for a full and true disclosure of the facts, Panhandle's request for a trial-type hearing is denied.

After taking into consideration all of the information in the record of this proceeding, I find that the authorization requested by Southeastern is not inconsistent with the public interest and should be granted.11/

Order

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

A. Southeastern Michigan Gas Company is authorized to import up to 9 Bcf of Canadian gas during the period beginning on the date of issuance, and ending February 28, 1987, in accordance with the provisions of the contract between Southeastern and Northridge submitted as a part of the application filed by Southeastern on December 21, 1984, and amended on April 1, 1985.

B. Southeastern shall notify the ERA in writing of the date of the first delivery of gas authorized in ordering paragraph A within two weeks after

deliveries begin.

C. Southeastern shall file with the ERA in the month following each calendar quarter, quarterly reports showing, by month, the quantities of natural gas imported under this authorization, and the price paid for those volumes.

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

--Footnotes--

1/ A contract year is defined as the 12-month period ending at 8:00 a.m. on November 1st of any calendar year, except the initial period which will be the eight-month period starting on March 1, 1985, and ending on November 1, 1985.

2/ 50 FR 2711, January 18, 1985.

3/ Transcript of Proceedings at 39, Application of Southeastern Michigan Gas Company, April 3, 1985.

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

5/ 49 FR 6684, February 22, 1984.

6/ Transcript at 23.

7/ Transcript at 7.

8/ Transcript at 22.

9/ Transcript at 33.

10/ See Northwest Natural Gas Company, DOE/ERA Opinion and Order No. 65, issued December 10, 1984 (1 ERA Para. 70,577); Cascade Natural Gas Corporation, DOE/ERA Opinion and Order No. 66, issued December 10, 1984 (1 ERA Para. 70,578); Southwest Gas Corporation, DOE/ERA Opinion and Order No. 69, issued December 18, 1984 (1 ERA Para. 70,581); and Northwest Alaskan Pipeline Company, DOE/ERA Opinion and Order No. 73, issued February 26, 1985 (1 ERA Para. 70,585).

11/ The DOE has determined that because existing pipeline facilities will be used and no new construction is being undertaken specifically for this

import, granting this application clearly 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 or environmental assessment is not required.