

Cited as "1 ERA Para. 70,596"

Tenngasco Exchange Corp. & LHC Pipeline Company (EPA Docket No. 84-19-NG), May 6, 1985.

DOE/ERA Opinion and Order No. 80

Final Order Granting Blanket Authorization to Import Natural Gas from Canada

1. Background

On December 7, 1984, Tenngasco Exchange Corporation and LHC Pipeline Company (TGX and LHC) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DME), pursuant to section 3 of the Natural Gas Act, requesting a blanket authorization to import Canadian natural gas as supplemental supply for sale in their domestic short-term, spot sales program. The applicants requested authority to import a volume of natural gas not to exceed 110 Bcf for the first two years and a volume not to exceed 120 Bcf for the succeeding two years for a four-year term beginning on the date of first delivery of the import. The applicants propose to buy natural gas from reliable Canadian sources, resell the gas to various customers, or act as an agent on behalf of sellers or purchasers, and if required, assist in the arrangements for transporting the gas to the end users.

On December 20, 1984, the ERA issued a notice of application inviting protests, interventions and written comments by February 6, 1985.^{1/} Fourteen motions to intervene representing sixteen parties were received.^{2/} One intervenor, Columbia Gas Transmission Company (Columbia) protested the application and asked that it be denied, or in the alternative, any order granting the requested import authority be conditioned to require that applicants provide 30 days notice of any proposed sales and to prohibit, for the most part, sales of such gas to an interstate pipeline's core market.

New York State Electric and Gas Corporation (NYSE&G) expressed concern that the applicants would be potential competitors in its service area under circumstances where the applicants could offer gas in an unregulated manner, thereby disrupting the present market such that the NYSE&G could lose most of its interruptible sales market.

Niagara Mohawk Power Corporation (Niagara Mohawk) believed that the application was too vague to evaluate and pointed out that the ERA should consider in its evaluation the current excess deliverability of domestic gas

which is causing disorder in affected markets.

It was the position of the Pacific Gas Transmission Company (PGT) that the ERA must reserve for itself the ability to determine whether each transaction comported with the DOE's import policy guidelines. PGT also contended that the ERA should impose safeguards adequate to avoid the adverse impacts such a proposal might have on consumers in general and on the maintenance of competitive terms in long-term, firm import arrangements. As one such safeguard, PGT suggested the imposition of a provision stating that the proposed sales would not displace other Canadian gas sales.

Transcontinental Gas Pipeline Corporation (Transco) expressed concern about the capacity of point of entry facilities and requested that any order issued to the applicants be conditioned to assign a lower priority for the transportation of short-term, interruptible imports than for firm import volumes through any point of entry facility.

On March 20, 1985, after a review of the information in the record, the ERA issued a procedural order to all parties providing opportunity for comments on its proposal to limit approval of the applicants' blanket authorization to a term of two years and to a maximum volume of 100 Bcf during the two-year term, consistent with recent orders granting other blanket authorizations.^{3/} The order required comments to be filed and served on all parties by April 3, 1985, and responses to be filed and served by April 10, 1985. The order requested that the parties review the proposed restrictions on the term and volumes to be imported under this blanket arrangement and their earlier comments on the application. If any opposition to the restricted proposal continued, the order required the parties to restate that opposition in order for it to be taken into consideration in the final decision. The order provided that previously filed comments could be incorporated by reference and thus restated in any additional comments.

Only Niagara Mohawk, PGT and Transco submitted additional comments. No new issues were raised by the comments to the procedural order, nor did the parties making comments change their position from their previous comments on the application. Columbia did not file a restatement of its protest of the application. Since Columbia and all other parties were notified by telephone on March 20 or 21, 1985, that each had been mailed a copy of the March 20, 1985, order, it is presumed that Columbia purposefully decided not to pursue its protest, and no longer is opposed to the application.^{4/}

II. Decision

The application filed by TGX and LHC has been evaluated in accordance with the Administrator's authority to determine if the proposed import 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." 5/ The Administrator is guided by the DOE's natural gas import policy guidelines.6/ Under these guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

The parties intervening in this case raised a number of issues related to the competitiveness of the proposed import. However, most of those issues relate to concerns that the import made under the blanket authorization will be too competitive rather than not competitive in the markets served.

Niagara Mohawk, both in its original intervention and in its comments in response to the procedural order, expressed concern that the ERA should evaluate whether the requested import authorization can be justified given the current excess of domestic deliverability of gas and the present market disorder. Niagara Mohawk contended that the ERA must consider the prevention of further potential market disruptions caused by short-term, interruptible sales skimming off the large industrial customers from present suppliers. In addition, Niagara Mohawk stated that the modification of the import proposed by the ERA does not cure the lack of specific information needed to fully evaluate the application.

TGX and LHC, in their response, perceived Niagara Mohawk's concern over the lack of justification for the new import in the face of excess domestic deliverability as an attempt to protect and insulate its market from potential competition. With respect to "skimming" of industrial customers to the detriment of the long-term suppliers and its other customers, the applicants asserted this is bare allegation, unsubstantiated by any reason except that of attempting to seek protection from possible competition. TGX and LHC pointed out that Niagara Mohawk's criticism of the application's specificity is without merit and moot since the ERA has already granted authorizations to import gas based on applications containing information and terms not materially different nor more detailed than the applicant's.

The ERA agrees with the position taken by the applicants on Niagara Mohawk's comments. The DOE strongly supports the establishment of a spot market, and the competition such short-term, spot sales bring to the marketplace.7/ The addition of spot sales to a surplus market places downward pressure on prices and encourages pipelines and distributors to continue to

renegotiate their arrangements to make them more competitive and market-responsive.

PGT, in its comments in response to the procedural order, reiterated the concerns stated in its initial intervention. Specifically, PGT requested the ERA to consider what impacts short-term proposals have on the maintenance of competitive terms for long-term, firm supplies of Canadian gas in the markets which would be affected. PGT restated its request that the ERA provide safeguards to assure protection of the interests of all gas consumers in the markets affected and not just a particular short-term buyer. Finally, PGT reiterated its concern that the proposed quarterly report required to be submitted by the applicants does not reserve to the ERA the ability to determine that the import policy guidelines will be satisfied in each import transaction.

In response to PGT's concern that the ERA reserve its ability to determine that each individual import transaction complies with the policy guidelines, applicants stated that, given the characteristics of the short-term, spot market sale, the proposed required quarterly reporting of sales data is precisely such a safeguard. TGX and LHC replied to PGT's reiterated concern that long-term imports of Canadian gas not be displaced by short-term sales by restating their belief that additional imports from additional sources foster price competition which is consistent with the policy goal of allowing market forces to keep the price of natural gas at market-clearing levels.

The ERA made a decision on PGT's concerns when it authorized the blanket import arrangements requested by Cabot Energy Supply Corporation and Northwest Alaskan Pipeline Company.^{8/} In those orders we found there was no need to protect long-term, firm imports against competition from short-term, spot imports. PGT has not submitted any additional evidence or arguments which cause us to change this position. We continue to believe that such arrangements enhance competition in the marketplace and that quarterly reporting requirements adequately safeguard the public interest.

Transco, in both its original intervention and in its comments in response to the procedural order, stated its concern that transportation of its firm Canadian import volumes could still be interrupted by even the reduced volumes proposed by the ERA in the event that insufficient pipeline capacity exists at its point of entry to transport all authorized gas imports. Accordingly, Transco repeated its request that, in any order granting the requested import, the ERA assign a higher priority for firm import volumes than for interruptible volumes through any existing point of entry facility.

In reply to Transco's restated request, the applicants repeated their previous argument that such decisions are best left to the contracting parties and asserted that there is precedent for the ERA to deny Transco's request for a conditioned order.^{9/}

The ERA is not persuaded by Transco's arguments that the ERA should assign priority rights in its import orders for transporting Canadian gas through existing point of entry pipeline facilities. Such priority rights are best negotiated in the ordinary course of arranging for product transportation by the contracting parties.

In sum, the ERA finds that the parties opposing the import have failed to raise issues or present evidence which would support a finding that the proposed or modified import arrangement is not competitive, or that would support disapproval of the authorization on other grounds. Further, it is noted that the applicants, in their response, indicated their willingness to accept the restrictions on the import arrangement of a two-year term and volumes not to exceed 110 Bcf, as proposed by the ERA in its March 20, 1985, procedural order.

This modified version of the applicants' request for authorization represents an opportunity to test the use of imported natural gas as a supplemental supply for the domestic spot market, where until recently it has been principally restricted to supplementing supplies for meeting long-term, domestic market requirements. Under this blanket import authority the applicants will be able to import, within fixed limits, Canadian natural gas for subsequently executed individual short-term sales contracts negotiated in the competitive atmosphere of the domestic spot market. Additional regulatory approval of each import sale will not be necessary. The ERA, through review of the contract sales information submitted by TGX and LHC in required quarterly reports, will be able to evaluate the impact of the individual transactions on the markets served. Other than the quarterly reporting requirement, no additional conditions to this order are necessary.

After taking into consideration all the information in the record of this proceeding, I find that granting the blanket authorization to import up to 110 Bcf of Canadian gas over a term of two years for sale in the domestic short-term, spot market is not inconsistent with the public interest.^{10/}

Order

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

A. Tenngasco Exchange Corporation and LHC Pipeline Company (TGX and LHC) are authorized to import up to 110 Bcf of natural gas from Canada for a term of two years beginning on the date of first delivery.

B. TGX and LHC shall notify the ERA in writing of the date of first delivery of natural gas imported under Ordering Paragraph A above within two weeks after the date of such delivery.

C. With respect to the imports authorized by this order, TGX and LHC shall file with the ERA in the month following each calendar quarter, quarterly reports showing, by month, whether sales have been made, and if so, the details of each transaction. The report shall include the purchase and sales prices, volumes, any special contract price adjustments, take or make-up provisions, duration of the agreements, ultimate sellers and purchasers, transporters, points of entry, and markets served.

Issued in Washington, DC, on May 6, 1985.

--Footnotes--

1/ 50 FR 879, January 7, 1985.

2/ Intervenors are: Northern Natural Gas Company; Joint Petition of Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin), and Lake Superior District Power Company; The Brooklyn Union Gas Company; Pacific Gas Transmission Company; Cabot Energy Supply Corporation; United Distribution Companies; Algonquin Gas Transmission Company; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation; Public Service Electric and Gas Corporation; Transcontinental Gas Pipeline Corporation; Columbia Gas Transmission Corporation; National Fuel Gas Supply Corporation; and Consolidated Gas Transmission Corporation.

3/ See Cabot Energy Supply Corporation, DOE/ERA Opinion and Order No. 72, issued February 06, 1985 (1 ERA Para. 70,124) and Northwest Alaskan Pipeline Company, DOE/ERA Opinion and Order No. 73, Issued February 26, 1985 (1 ERA Para. 70,585).

4/ We note that a subsidiary of Columbia Gas System, Inc., which in turn is an affiliate of Columbia, is a limited partner in the U.S. Natural Gas Clearinghouse, Inc., which is requesting blanket authorization to import up to 1 Bcf per day of Canadian natural gas for four years for short-term, spot market sales. See The U.S. Natural Gas Clearinghouse, Ltd., Application to Import Natural Gas from Canada; ERA Docket No. 85-06-NG, (50 FR 10533, March

15, 1985).

5/ 15 U.S.C. 717b.

6/ 49 FR 6684, February 22, 1984.

7/ In *Increasing Competition in the Natural Gas Market: Second Report* Required by Section 123 of the Natural Gas Policy Act of 1978, submitted in January 1985, the DOE observed that an active spot market will allow the natural gas market to allocate risks efficiently and will help minimize price and supply fluctuations as the market moves from a tightly regulated environment towards fully competitive market conditions. See Summary, pp. S-1 and S-5, and Chapter 6, p. 75.

8/ See *supra* note 3.

9/ See *Tennessee Gas Pipeline Company*, DME/ERA Opinion and Order No. 59, issued September 4, 1984 (1 ERA Para. 70,569).

10/ Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that 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.