Cited as "1 ERA Para. 70,599"

N-REN Corporation (ERA Docket No. 85-08-NG), June 3, 1985.

DOE/ERA Opinion and Order No. 83

Order Granting Authorization to Import Natural Gas from Canada

I. Background

On April 4, 1985, N-REN Corporation (N-REN) 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 an authorization to import up to 35 MMcf of Canadian natural gas per day. N-REN has entered into an agreement with Northridge Petroleum Marketing, Inc. (Northridge), a Canadian corporation with control over natural gas reserves in the Province of Alberta, Canada, to obtain the gas on a best-efforts basis at $2.87 (U.S.) per Mcf. This price was changed to $2.76 (U.S.) per MMBtu by an amending agreement filed with the ERA on May 8, 1985.

N-REN, a Delaware corporation, whose principal place of business is in Cincinnati, Ohio, intends to use the gas at a plant it owns and operates in East Dubuque, Illinois. This plant uses natural gas as a process fuel and feedstock in the manufacture of anhydrous ammonia and by-products primarily for essential agricultural purposes. The agreement with Northridge has an initial term which begins on the date of first delivery and ends on November 1, 1986. Following the initial term, the agreement could be automatically extended for a two-year term and then could be automatically extended for successive one-year terms unless terminated by written notice by either party at least 60 days prior to the expiration of the initial term or any subsequent term. Notwithstanding the automatic extension of terms in its agreement with Northridge, N-REN notified the ERA by a letter dated and filed on May 1, 1985, that the authorization it is seeking is for a two-year period commencing on the date of first delivery. The maximum obligation during the initial term of the agreement, ending November 1, 1986, is 21.90 Bcf with deliveries in any given year not to exceed 10.95 Bcf.

The price of the gas may be renegotiated upon 30 days written notice by either party subject to regulatory approvals. If negotiations fail, the agreement will terminate 30 days following cessation of negotiations. The agreement also provides for immediate renegotiation of the price if changes in the U.S./Canadian exchange rate or increases in transportation costs in Canada result in a price net-back to Alberta lower than the Alberta

border price. The agreement contains no minimum purchase obligation or take-or-pay requirement and allows N-REN to revert totally to domestic supplies without penalty if the Canadian supply becomes uncompetitive. However, N-REN has agreed to take the gas "to the best of its efforts" up to an average daily quantity of 30 MMcf but may restrict the flow or discontinue the taking of gas for any reason and to any extent, and may commingle the gas with other higher or lower priced gas.

Under the proposed import arrangement, the gas will be delivered by Northridge at the interconnection of the facilities of TransCanada PipeLines Limited and Great Lakes Gas Transmission Company (Great Lakes) at the international border between Canada and the United States in the vicinity of Noyes, Minnesota. Great Lakes will transport the gas over existing facilities to its interconnection with Northern Natural Gas Company (Northern) at either Carlton or Fortune Lake, Minnesota. Northern will then transport the gas over its existing facilities to Northern Illinois Gas Company (NI-Gas), N-REN's current distributor, which will then deliver the gas to N-REN's plant at East Dubuque, Illinois. N-REN will bear the cost of transporting the gas from the Canadian border to its plant. This cost has been projected to be no more than $.34 (U.S.) per MMBtu.

II. Interventions and Comments

A notice of N-REN's application was issued on April 15, 1985, inviting protests and motions to intervene to be filed by May 23, 1985.1/ Two motions to intervene were filed. A joint motion was filed by Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin) and Lake Superior District Power Company (collectively referred to as the NSP Companies). The other motion to intervene was filed by Natural Gas Pipeline Company of America (Natural).

The NSP Companies, the second largest jurisdictional distribution customer on Northern's system, intervened in their own direct interest but made no other comment and did not request further proceedings. Natural, a major pipeline supplier to NI-Gas, intervened and protested the application on the grounds that unfair competition would result from the proposed import, but did not request further proceedings. This order grants intervention to all movants.

III. Decision

N-REN's application 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." 2/ The Administrator is guided by the DOE's policy relating to the regulation of natural gas imports.3/ Under the policy guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

In its motion to intervene and protest, Natural stated that unfair competition would result if N-REN's application were approved. Natural asserted that the price to N-REN is significantly lower than that available to Natural from its Canadian suppliers because the proposed import was not subjected to the same Canadian floor price limitations as its arrangement was. Natural expressed concern that N-REN's import could have the anomalous effect of backing out firm sales of Canadian gas. Natural asserted that such action could undermine negotiations completed by long-term purchasers to bring prices more in line with market forces. Natural urged that the ERA give careful consideration to the effect of spot sales on long-term supplies.

The ERA believes that the competitiveness of an import is of 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. The ERA has ruled in numerous import cases that it does not intend to protect long-term import arrangements from competition.4/ Natural has options available to it to meet competition, as do other pipelines. Natural has indicated that the new prices under its contracts were the result of direct negotiations to bring prices more in line with market forces. Natural may continue to pursue such options.

Natural alleged that the proposed import could undermine negotiations completed by long-term purchasers to bring prices more in line with market forces. The ERA is not persuaded 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 N-REN-Northridge arrangement will change this.

Natural claimed that unfair competition would result if the proposed import is approved because the price N-REN will pay is significantly lower than that available to Natural because of differing floor prices imposed by

Canada on Natural's and N-REN's contracts. While the DOE has urged that the Canadian government remove floors from its export prices, the ERA does not intend to disapprove import arrangements which are competitive and that put pressure on other arrangements to become more competitive.

The N-REN arrangement for the import of Canadian gas, as set forth in the application, is wholly consistent with the DOE policy guidelines. The agreement with Northridge contains no minimum purchase obligation or take-or-pay requirement, and the price may be renegotiated upon 30 days notice with automatic termination if negotiations fail. The volumes will be imported on a best-efforts, interruptible basis under a two-year authorization which N-REN may seek to have extended prior to its termination. The flexibility of the arrangement, which also allows N-REN to revert to domestic supplies without penalty, ensures that the gas will only be imported when it is dully competitive.

The gas import policy guidelines recognize that the need for an import is a function of competitiveness. Under the competitive arrangement described above, N-REN will purchase the gas only to the extent it needs the volumes for its fertilizer manufacturing operations. The security of the import supply is not a major issue because the gas is to be purchased on a best-efforts, interruptible basis.

After taking into consideration all information in the record of this proceeding, I find that the authorization requested by N-REN is not inconsistent with the public interest and thus should be granted.5/

Order

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

A. N-REN Corporation (N-REN) is authorized to import up to 35 MMcf of Canadian natural gas per day during the 24-month period beginning on the date of first delivery in accordance with the provisions established in the agreement, as amended, submitted as part of the application in this docket.

B. N-REN shall notify the ERA in writing of the date of first delivery within two weeks after deliveries begin.

C. N-REN 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 per MMBtu paid for those

volumes.

D. 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 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., June 3, 1985.

--Footnotes--

1/ 50 FR 15960, April 23, 1985.

2/ 15 U.S.C. Sec. 717b,

3/ 49 FR 6684, February 22, 1984.

4/ 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); Cabot Energy Supply Corporation, DOE/ERA Opinion and Order No. 72, issued February 26, 1985 (1 ERA Para. 70,124); Northwest Alaskan Pipeline Company, DOE/ERA Opinion and Order No. 73, issued February 26, 1985 (1 ERA Para. 70,585); and Tenngasco Exchange Corporation and LHC Pipeline Company, DOE/ERA Opinion and Order No. 80, issued May 6, 1985 (unpublished).

5/ 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.