Cited as "1 ERA Para. 70,613"

Northeast Gas, Inc., (ERA Docket No. 85-23-NG), December 20, 1985.

DOE/ERA Opinion and Order No. 95

Order Granting Authorization to Import Natural Gas from Canada

I. Background

On October 8, 1985, Northeast Gas, Inc. (NGI) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act (NGA), for blanket authorization to import up to 100 Bcf of Canadian natural gas over a two-year period beginning April 1, 1986. NGI proposes to import and resell the gas to its U.S. purchaser clients which are comprised of 23 natural gas distribution companies serving markets in the Northeastern and Middle Atlantic States.1/ NGI also would act as agent for its purchaser clients and the Canadian suppliers. According to NGI, the gas will generally be used to displace alternate fuels or higher-priced interruptible gas supplies.

NGI states the specific agreements executed under this authorization will not exceed two years in duration with most expected to last less than one year. Such agreements may be subject to extension at the option of the parties.

NGI asserts that no new pipeline facilities will be required in order to import the gas. Transportation arrangements are expected to be on a best-efforts basis with the specific terms to be negotiated between NGI or its clients and the Canadian suppliers. NGI proposes to file quarterly reports with the ERA identifying each transaction.

NGI further asserts that its purchaser clients will import gas at rates which, when delivered, will be competitive with available domestic gas supplies. The terms of each contract will maximize responsiveness to market factors and will be designed to be price competitive over the term. NGI further asserts that the proposed import is not inconsistent with the public interest because it will allow Northeast's gas consumers expanded access to competitively priced Canadian supplies.

II. Intervention and Comments

A notice of NGI's application was issued on October 31, 1985 and published in the Federal Register on November 7, 1985.2/ The notice invited

protests and petitions to intervene, which were to be filed by December 9, 1985. Motions to intervene were filed by Public Service Electric and Gas Company, Consolidated Edison Company of New York, Inc. and Long Island Lighting Company supporting the application. A joint motion to intervene was also filed by Panhandle Producers and Royalty Owners Association, et al., representing the Panhandle Producers and Royalty Owners Association, West Central Texas Oil and Gas Association, North Texas Oil and Gas Association, and East Texas Producers and Royalty Owners Association (hereafter referred to collectively as PPROA) opposing the application and requesting a trial-type hearing. This order grants intervention to all movants.

III. Decision

NGI's application has been evaluated in accordance with the Administrator's authority to determine if the proposed import meets the public interest requirements of Section 3 of the NGA. Under Section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest." 3/ The Administrator is guided in this determination by the DOE's natural gas policy guidelines.4/ Under these guidelines the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

PPROA, representing the interests of producers, royalty owners and service companies in Texas, New Mexico, Oklahoma and Kansas, opposes the proposed import because (1) NGI failed to present specific information needed by the ERA to adequately evaluate the national need for additional Canadian gas supplies and (2) the ERA should not rely upon the DOE's natural gas import policy guidelines to form the basis for its decision in this case because they were not promulgated as a substantive rule under the Administrative Procedure Act. PPROA requests that the ERA hold a trial-type hearing if the application is not summarily rejected. PPROA raises the following as issues of material fact which it contends must be addressed in a trial-type hearing before the ERA can grant the requested authorization: (1) whether blanket importation authorizations are inconsistent with the national security objectives that Section 3 of the NGA is designed to protect; (2) the identity of NGI's prospective suppliers and purchasers, and security of those supplies; (3) whether the proposed import serves the needs of specific gas markets; and (4) whether the proposed import price is consistent with the public interest.

The ERA has carefully reviewed PPROA's request for a trial-type hearing and decided it should be denied. PPROA has failed to identify, in accordance with the ERA's procedural rules, material and relevant factual issues genuinely in dispute and has failed to demonstrate that such a hearing is

necessary for the ERA to make a decision on this application. The purported disputed issues of material fact identified by PPROA are discretionary policy issues which the ERA has already decided in earlier, similar blanket import authorizations.5/ Moreover, PPROA has failed to provide any evidence which would cause the ERA to change its position.

The ERA has determined in this case, as in the case of prior blanket authorizations, the gas will be taken only if it is needed and the price is competitive.6/ PPROA has presented no evidence to the contrary. Thus PPROA's arguments concerning need are not sustained. Further, PPROA's concerns regarding national security objectives are obscure. If PPROA is questioning the security of the imported supply, the ERA believes, and has so determined in other blanket and short-term authorizations, that security of supply is not an issue in short-term, best-effort types of arrangements.7/

As the ERA has noted in previous opinions in which blanket authorizations were found to be in the public interest, a spot market would not operate successfully were the ERA to require specific details in advance. The DOE strongly supports the establishment of a spot market, and the competition such short-term, spot sales bring to the marketplace.8/ Under the blanket import authority granted herein, NGI will be able to import, within fixed parameters, Canadian natural gas for subsequently executed individual short-term sales contracts negotiated in the competitive atmosphere of the domestic spot market. The ERA, through review of the contract sales information submitted by NGI in its required quarterly reports, will be able to evaluate the impact of the individual transactions on the markets served.

PPROA contends that the ERA cannot rely on the import policy guidelines as if they are a substantive rule, which can be issued only pursuant to a rulemaking proceeding. The ERA agrees. Formulated in large part on the basis of public comments,9/ the policy statement instead serves as a discretionary guide and advance notice to the public of the manner in which the Department has decided to exercise its responsibility under Section 3 of the NGA to maintain the public interest in international gas trade. The policy reflects a belief that "competitive import arrangements are an essential element of the public interest," 10/ and that the parties to commercial arrangements, if permitted to negotiate free of government constraints, will structure competitive arrangements which will be market-responsive over their term. It provides a general framework for the ERA in approaching its statutory responsibilities, which ultimately are resolved in each case, as in this case, on the specific record and on precedents involving similar cases, not on any application of the policy as a rule.

After taking into consideration all information in the record of this proceeding, I find that granting NGI blanket authority to import up to 100 Bcf over a term of two years for sale in the domestic, short-term, spot market is not inconsistent with the public interest.11/

Order

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

A. Northeast Gas Inc. (NGI) is authorized to import up to 100 Bcf of Canadian natural gas over a two-year period beginning April 1, 1986.

B. NGI 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, NGI shall file with the ERA in the month following each calendar quarter, quarterly reports indicating, by month, whether sales have been made, and if so, giving the details of each transaction. The report shall include for each transaction the purchase and sales price, volumes, any special contract price adjustments, take or make-up provisions, duration of agreements, ultimate sellers and purchasers, transporters, points of entry, and markets served.

D. The request for a trial-type hearing filed by Panhandle Producers and Royalty Owners Association, et al., is hereby denied.

E. 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., December 20, 1985.

--Footnotes--

1/ Bay State Gas Company, The Berkshire Gas Company, Boston Gas Company, The Brooklyn Union Gas Company, The Colonial Gas Company, Concord Natural Gas Company, The Connecticut Light & Power Company, Connecticut Natural Gas

Corporation, Consolidated Edison Company of New York, Inc., Elizabethtown Gas Company, Energy North, Inc., Essex County Gas Company, Fitchburg Gas & Electric Light Company, National Fuel Gas Supply Corporation, New Jersey Natural Gas Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Norwich Utilities, Public Service Electric & Gas Company, South Jersey Gas Company, Southern Connecticut Gas Company, U.G.I. Corporation, and Valley Gas Company.

2/ 50 FR 46336, November 7, 1985.

3/ 15 U.S.C. Sec. 717b.

4/ 49 FR 6684, February 22, 1984.

5/ See Cabot Energy Supply Corporation, 1 ERA Para. 70,124 (February 26, 1985); Northwest Alaskan Pipeline Company, 1 ERA Para. 70,585 (February 26, 1985); Tenngasco Exchange Corp. and LHC Pipeline Company, 1 ERA Para. 70,596 (May 6, 1985); Dome Petroleum Corporation, 1 ERA Para. 70,601 (July 2, 1985); U.S. Natural Gas Clearinghouse, Ltd., 1 ERA Para. 70,602 (July 5, 1985); Northridge Petroleum Marketing U.S., Inc., 1 ERA Para. 70,605 (September 27, 1985); Westcoast Resources, Inc., 1 ERA Para. 70,606 (September 27, 1985); Salmon Resources, Ltd., unpublished (December 13, 1985).

6/ Id.

7/ See, e.g., Cascade Natural Gas Corporation, 1 ERA Para. 70,578 (December 10, 1984); Southwest Gas Corporation, 1 ERA Para. 70,581. (December 18, 1984); Cabot Energy Supply Corporation, supra, note 5; U.S. Natural Gas Clearinghouse, Ltd., supra, note 5; Salmon Resources Ltd., supra, note 5.

8/ 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, at S-1, S-5, and Chapter 6, at 75.

9/ Public participation in the DOE's gas import policy review undertaken in 1983 came primarily through two conferences held in January and September. See 47 FR 57756, December 28, 1982, and 48 FR 34501, July 29, 1983.

10/ 49 FR 6687.

11/ 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.