Cited as "1 ERA Para. 70,627"

Northwest Pipeline Corporation (ERA Docket No. 85-20-NG), December 10, 1985.

DOE/ERA Opinion and Order No. 92

Order Approving an Amendment to an Authorization to Import Natural Gas from Canada

I. Background

On September 24, 1985, the Northwest Pipeline Corporation (Northwest) 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) and section 590.201 of the ERA's administrative procedures, to amend ERA Opinion and Order No. 87 (Order No. 87) issued September 10, 1985.1/e application requested the ERA to extend Northwest's authority granted in Order No. :7 for three months from November 1, 1985, to January 31, 1986, in accordance with a September 17, 1985, letter of agreement between Northwest and its Canadian supplier, Westcoast Transmission Company Limited (Westcoast).

The agreement would extend for three months an amendment to Northwest's purchase arrangement with Westcoast which established a two-part, demand-commodity pricing structure that resulted in an average unit rate of $3.40 per MMBtu, based upon original sales projections at a 33 percent load factor. The agreement also would redefine the term "contract year" to be the period of 12 consecutive months beginning on February 1, 1985, and ending on January 31, 1986. The agreement also contained a provision whereby Westcoast's charges to Northwest would be flowed through to Northwest's customers as they were billed to Northwest. The amendment was intended to be effective from November 1, 1984, to October 31, 1985. Without the extension, Northwest's purchases from Westcoast will revert the pre-existing purchase contract, thereby reinstating a purchase price mf $4.40 per MMBtu.

II. Procedural History

A notice of Northwest's application was published in the Federal Register on October 11, 1985.2/ The notice invited protests and motions to intervene which were to filed by November 12, 1985. Motions to intervene were filed by CP National Corporation (CPN), Cascade Natural Gas Corporation (Cascade), Colorado Interstate Gas Company (CIG), Intermountain Gas Company (Intermountain), Mountain Fuel Resources, Inc. (Mountain Fuel), Northwest

Natural Gas Company (NNG), Panhandle Producers and Royalty Owners Association, (PPROA), Southwest Gas Corporation (Southwest), Washington Natural Gas Company (Washington Natural), and Westcoast. In addition, the Public Utility Commission of Oregon filed a notice of intervention. This order grants all interventions.

All interveners except Southwest filed comments on the application. All commenters supported the application except CIG, Mountain Fuel, and PPROA who opposed the application. PPROA requested, if the ERA did not disapprove the two-part rate contained in the application, the ERA to set the matter for a trial-type hearing. CIG also requested the ERA to conduct a trial-type hearing so that it and others could present evidence, submit briefs, cross examine witnesses, and be heard in oral argument.

On November 25, 26, and 27, 1985, Northwest, Westcoast and Intermountain, respectively, filed answers to PPROA's comments and motion to intervene. Northwest, Westcoast and Intermountain oppose PPROA's motion to intervene because they contend that PPROA is not an interested party in this proceeding. They maintain that PPROA has not shown that its members supply gas to Northwest and that its interest in the case is only of a general nature. They argue that, since PPROA has no direct interest in this proceeding PPROA should not be granted the right to intervene. The ERA does not so narrowly limit intervention, and has therefore granted PPROA's motion to intervene. Northwest, Westcoast and Intermountain also request that, if PPROA is granted intervention, the ERA deny PPROA's request to summarily deny or set for hearing Northwest's proposed extension.

III. Decision

The application filed by Northwest 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 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 import 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.

Mountain Fuel states that it is not opposed to the extension and only intervened and protested to the extent necessary to preserve its rights in ERA Docket No. 85-12-NG concerning its opposition to the as-billed pass through of the demand-commodity rate and the alleged uncompetitiveness of the price.5/ CIG also protests on the same grounds it raised in Docket No. 85-12-NG, that

the import is allegedly uncompetitive and that the need for the proposed import volumes does not exist.6/

The issues raised by Mountain Fuel and CIG--ERA jurisdiction as it relates to the as-billed passthrough of demand-commodity charges, the alleged noncompetitiveness of the import in their market areas, and the alleged lack of need for the import--were considered and resolved in ERA Docket No. 85-12-NG. This application merely represents a three-month extension of the authorization granted in that docket. Mountain Fuel and CIG submitted no new evidence concerning these issues in this docket, and merely repeat their positions stated in ERA Docket No. 85-12-NG. Neither Mountain Fuel nor CIG has presented any evidence to persuade the ERA to change its position on these matters. Thus, the ERA's decision on these issues, as presented in Order Nos. 87 and 87A,7/ issued September 10, 1985, and November 8, 1985, respectively, still stands and applies equally to the proposed three-month extension.

In its comments, CIG also raised the concern that, through the "ruse of amendments," Northwest will be able to convert an interim measure into a de facto long-term arrangement. CIG alleges that imposition of the terms of the amendment approved in Order No. 87 over the long term requires an examination of the long-term needs of Northwest's markets as well as whether the agreement will remain competitive over the long term.

In Docket No. 85-12-NG, the ERA considered the needs of the Northwest system and the competitiveness of the October 1, 1984, letter agreement in the context of Northwest's existing authorizations to import Canadian gas.8/ The ERA's examination of those considerations was not limited to a one-year period but included a review of all of the evidence in the record, and its decision was based upon that evidence. The term of the authorization was limited to one year because that was the length of the time requested by Northwest. Had Northwest requested approval for a one-year and three-month period or a two-year period, none of the evidence submitted in Docket No. 85-12-NG, nor in this proceeding, would indicate that the application should not have been approved. CIG's allegations that Northwest is using a ruse are speculative. It would be inappropriate in this proceeding for the ERA to attempt to determine what Northwest intends to do in the future. CIG's contention that an analysis of the long-term effects of the October 1, 1984, letter agreement is required before the requested three-month extension can be granted is unsupported by any evidence submitted to the ERA.

The ERA has reviewed CIG's request for a trial-type hearing and decided that it should be denied. CIG has not raised any new issues nor identified any new disputed facts in its comments that were not previously addressed in Order

Nos. 87 and 87A. CIG's allegation that the three-month extension requested in this proceeding constitutes a ruse by Northwest to turn the October 1, 1984, letter agreement into a long-term arrangement is unsupported by any evidence, and does not justify its request for a trial-type hearing.

PPROA, who did not intervene in Docket No. 85-12-NG, opposes the extension of the Northwest import authorization for a number of reasons. First, PPROA states that, while domestic natural gas producers incur substantial fixed costs related to the production of natural gas, federal regulations preclude them from using a demand charge to recover such fixed costs. PPROA alleges that competing imports from Canada should be subject to the same one-part price that domestic producers face.

PPROA is in error. As Northwest stated in its answer to PPROA, Westcoast is not a gas producer selling gas at wellhead prices, but rather is a gas pipeline that purchases gas in Canada and then transports it to the U.S. for resale. U.S. natural gas pipelines utilize two-part demand-commodity rates, and pass through those rates on an as-billed basis. It is the ERA's position and the policy of the DOE that, to avoid discrimination, Canadian natural gas pipeline should be afforded the same opportunity to compete with U.S. pipelines by utilizing the demand-commodity pricing system. Fixed costs recovered under the demand portion of these rates are related to the transportation of the gas and not the production and gathering of the gas.

Second, PPROA alleges that the two-part rate is a subterfuge to compel Northwest to purchase Westcoast volumes despite the availability of less expensive domestic production. The ERA disagrees. Northwest freely entered into its purchase agreement with Westcoast and in this proceeding is seeking to extend that agreement. There has been no evidence submitted to the record, by PPROA or any other party, to support PPROA's allegation that the two-part rate compels Northwest to purchase from Westcoast rather than other suppliers, domestic or foreign. Most of Northwest's customers support the agreement as being competitive. Five of Northwest's customers in this proceeding support Northwest's application to extend the agreement.9/ Even Mountain Fuel, one of the two customers protesting the application, states that it is not opposed to the extension for which Northwest seeks approval."10/

PPROA also alleges that there is a large amount of shut-in domestic production and because of this EPA approval of the two-part rate would not be in the public interest. PPROA maintains that "[n]atural gas markets have become increasingly competitive and many domestic producers are facing unilateral abrogation of their gas purchase agreements with their pipeline purchasers."11/ As Northwest stated in its answer, PPROA has only described

the general nature of today's declining gas market and the potential competition it may face from imports, even though it has not shown how Northwest's arrangement with Westcoast affects that market. It appears to the ERA that PPROA's complaint is that Canadian gas is too competitive in the market place. The statements of Northwest's customers that this supply is competitive and PPROA's concerns about the effect of that competition show that the gas imported under the proposed extension of this agreement is competitive in the marketplace and thus should be found to be in the public interest.

Finally, PPROA requested that the ERA convene a trial-type hearing on the application. The ERA has determined that PPROA raised no disputed issues of material fact that would justify convening a trial-type hearing pursuant to 10 CFR 590.313. The issues raised by PPROA concerning the federal regulation of domestic producer prices, the effect of the two-part rate upon Northwest's purchasing practices, and the competitive impact of the Westcoast gas on the general domestic gas market are either irrelevant and immaterial or do not represent facts genuinely in dispute. Thus, PPROA'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 extension of the authorization requested by Northwest is not inconsistent with the public interest and should be granted.12/

ORDER

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

A. DOE/ERA Opinion and Order No. 87, issued to Northwest Pipeline Corporation (Northwest) on September 10, 1985, is hereby amended to extend its term until January 31, 1986, in accordance with the provisions of the September 17, 1985, letter of agreement between Northwest and its Canadian supplier, Westcoast Transmission Company Limited, submitted as a part of the application filed by Northwest on September 24, 1985.

B. The requests for a trial-type hearing filed by Panhandle Producers and Royalty Owners Association, et al (PPROA) and by Colorado Interstate Gas Company are hereby denied.

C. The requests of Northwest, Westcoast, and Intermountain Gas Company deny the motion of PPROA to intervene filed by PPROA are hereby denied.

D. The motions to intervene and notice of intervention 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., on December 10, 1985.

--Footnotes--

1/ Northwest Pipeline Corporation, ERA Docket No. 85-12-NG, 1 ERA Para. 70,604.

2/ 50 FR 41555.

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

4/ 49 FR 6684, February 22, 1984.

5/ Protest and Motion to Intervene of Mountain Fuel Resources, Inc., November 12, 1985, at 3-4.

6/ Motion of Colorado Interstate Gas Company to Intervene and Protest, November 12, 1985, at 2-3.

7/ See note 1 supra, and Northwest Pipeline Corporation, DOE/ERA Opinion and Order No. 87A, issued November 8, 1985, unpublished.

8/ See Northwest Pipeline Corporation, DOE/ERA Opinion and Order No. 38, 1 ERA Para. 70,537 (December 21, 1981); Northwest Pipeline Corporation, DOE/ERA Opinion and Order No. 56, 1 ERA Para. 70,566 (July 5, 1984).

9/ CP National, Cascade, Intermountain, NNG, Washington Natural all support the extension of the agreement in their comments.

10/ See supra note 5, at 3.

11/ See supra note 4, at 3.

12/ The DOE has determined that because existing pipeline facilities will be used and no new construction is being undertaken 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.Q.C. 4321, et seq.) and therefore an environmental impact statement or environmental assessment is not required.