

Cited as "1 ERA Para. 70,654"

Tennessee Gas Pipeline Company (ERA Docket No. 86-06-NG), June 19, 1986.

DOE/ERA Opinion and Order No. 131

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

## I. Background

On January 15, 1986, Tennessee Gas Pipeline Company (Tennessee) 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), to amend an existing natural gas import authorization granted by the ERA on April 24, 1981, to Tennessee in DOE/ERA Opinion and Order No. 32 (Order 32).<sup>1/</sup> Order 32 authorized Tennessee to import up to 75,000 Mcf of natural gas per day from ProGas Limited (ProGas) of Calgary, Alberta, Canada, at a price not to exceed \$4.94 per Mcf. Deliveries were authorized through October 31, 1987. On April 16, 1984, Tennessee had notified the ERA that it intended to seek an amendment to its ProGas contract to bring it into conformity with the DOE policy guidelines for natural gas imports.<sup>2/</sup>

On November 25, 1985, Tennessee and ProGas reached an agreement as a result of their renegotiations. The November 25 agreement represents a new contract, supersedes all prior agreements, and is the arrangement for which Tennessee is requesting approval in the January 15, 1986, application. According to Tennessee, the new contract continues many of the elements of the original May 17, 1979, agreement, although the pricing provisions were renegotiated.

Tennessee states that the new contract includes a two-part demand/commodity charge previously renegotiated in 1984. The monthly demand charge is \$15.21 per Mcf of daily contract quantity. This demand charge can be adjusted up or down to reflect transportation cost changes but, to the extent this is done, the commodity charge is decreased or increased to reflect the change. The contract terms provide for quarterly adjustment of the commodity charge tied to changes in the average daily prices of No. 6 fuel oil and No. 2 heating oil, per spot cargoes, New York harbor. The price mechanism for the commodity charge can be renegotiated yearly and disputes are subject to binding arbitration. The commodity charge was \$2.00 (U.S.) per MMBtu at the date of filing. At full contract quantity, this resulted in a total price on the date of application or \$2.50 per Mcf. On April 18, 1986, Tennessee advised

the ERA, and asked that it be added to the record, that as of April 1, 1986, its commodity charge from ProGas had decreased to \$1.67 per MMBtu for a total price at 100 percent load factor of \$2.17 per MMBtu.

In addition, Tennessee states that the contract provides that ProGas, from time to time, may offer certain volumes of the contract gas as "special purchase gas" for sale at a commodity charge less than the commodity charge otherwise in effect under the agreement. Tennessee claims this portion of the agreement provides a more expeditious mechanism for adjustment of prices to meet changing market conditions than is provided by the quarterly adjustment provisions. The contract allows Tennessee to assign its rights and obligations with respect to the purchase, receipt and payment for any or all of this special purchase gas to third parties through spot sales. Sale of this special purchase gas would also serve to fulfill Tennessee's take-or-pay obligation of 60 percent under the new contract. There is also a ratable take provision based on all of Tennessee's long-term purchases if purchases from ProGas fall to 75 percent during the contract year.

Tennessee's application also asks for an extension of the authorization to import gas after October 31, 1987, until October 31, 2000. According to Tennessee, by the terms of its May 17, 1979, contract with ProGas, the initial daily contract quantity of 75,000 Mcf was to be in effect until October 31, 1979. However, because of waivers of certain rights by TransCanada PipeLines Limited (TransCanada), the 75,000 Mcf per day is now available to Tennessee through October 31, 1988. The November 25, 1985, agreement provides for annual stepdowns after October 31, 1988, of 20 percent in the daily contract quantity. These stepdowns will only occur, however, if TransCanada timely exercises its option to purchase certain quantities of gas from ProGas. If TransCanada waives its rights, the contract is ever-greened to provide for the sale of gas by ProGas to Tennessee until October 31, 2000. In the expectation that TransCanada will continue to waive its purchase rights, Tennessee requests that its authorization be amended to allow the import of up to 75,000 Mcf per day through October 31, 2000. Tennessee also requests authorization to import gas for the account of third parties through October 31, 2000, the time period of the extension.

In support of its application, Tennessee asserts that the price adjustment and renegotiated provisions ensure that the price of gas under the contract will be responsive to the marketplace, and that all its contractual changes are consistent with the DOE's policy guidelines. Tennessee requests that the ERA find, pursuant to Section 3 of the NGA, that the import of natural gas under the terms of the new contract between Tennessee and ProGas, insofar as the agreement affects the prices to be paid, including the use of a

two-part, demand-commodity pricing structure, with gas costs passed through on that basis, complies with the policy guidelines and is not inconsistent with the public interest.

## II. Procedural History

The ERA issued a notice of the amended application on March 6, 1986, inviting protests, motions to intervene, or comments to be filed by April 7, 1986. The ERA received nine motions to intervene. ProGas intervened in support of the application. The other eight intervenors did not comment on the application and requested no additional procedures. Long Island Lighting Company (LILCO) filed a late motion to intervene generally in support of the Tennessee Application. With regard to this late filing, no delay to the proceeding nor prejudice to any party will result from granting this unopposed motion. This order grants intervention to all movants.<sup>3/</sup>

## III. Decision

Tennessee's application has been reviewed to determine if it conforms with Section 3 of the NGA. 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."<sup>4/</sup> In making this finding, the ERA Administrator is guided by the DOE's natural gas import policy guidelines.<sup>5/</sup> Under this policy, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

The applicant maintains that the renegotiated provisions establishing a demand/commodity pricing structure and basing prices on competing fuels satisfy this policy objective and that purchases at a "special commodity price" will benefit Tennessee and its customers. No objection has been raised to this assertion. In fact, LILCO, a customer, states in its intervention that the new contract is "considerably more favorable to Tennessee and its customers than the original contract approved by ERA in Docket No. 79-15-NG."<sup>6/</sup> The ERA therefore finds that this renegotiated import arrangement will be competitive in the markets served over the term of the authorization.

As to need for the imported natural gas supply, Tennessee refers to the conclusion by ERA that "there was an adequate showing of need for this gas supply by Tennessee for a "period of 20 years" in Order 32.<sup>7/</sup> To the extent that demand may be temporarily reduced, the new contract provisions provide for temporary sales at reduced prices to Tennessee or third parties who may desire to purchase a portion of the contract quantity. Furthermore, need has not been disputed. Therefore, the ERA finds that Tennessee has demonstrated

that there is need for this import over the term of the arrangement.

There has been no dispute as to the security of the Canadian supply of natural gas. Past history of the supply and reserves of natural gas available to ProGas raise no doubts that supplies will be available over the term of the requested authorization.

After taking into consideration all of the information in the record of this proceeding and the absence of opposition to the application, I find that the renegotiated pricing and other terms of the contract, authority to make third party sales, and the extension of the authorization requested by Tennessee are not inconsistent with the public interest and should be granted.<sup>8/</sup>

However, we are denying Tennessee's request for an authorization for "special commodity price" sales for the term of the contract. The two-year limit on the term of such sales was a consideration imposed in recognition of the experimental nature of the blanket-type authorization. We still consider this an important condition and Tennessee offers no reason sufficiently compelling to diverge from this policy. It gives the ERA an opportunity to review the impact of the blanket program after a reasonable period of time. We note that, assuming the blanket authorizations operate as envisaged, Tennessee may request and receive an extension of this blanket authorization. Also, to be consistent with previous authorizations, the term will commence on the date of first delivery rather than on approval of the application. The authorization sought will provide Tennessee with blanket import authority to negotiate and transact individual, short-term sale arrangements without further regulatory action.

#### ORDER

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

A. DOE/ERA Opinion and Order No. 32, issued to Tennessee Gas Pipeline Company (Tennessee) on April 24, 1981, is hereby amended to extend its term until October 31, 2000, in accordance with the provisions of the November 25, 1985, agreement between Tennessee and its Canadian supplier, ProGas Limited, submitted as a part of the application filed by Tennessee on January 15, 1986.

B. Within the authorization to import up to 75,000 Mcf per day, Tennessee may assign its rights and obligations with respect to the purchase, receipt and payment for any and all of gas designated as "special purchase

gas" to third parties through spot sales for a period of two years from the date of the first such sale.

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

D. With respect to the imports authorized by this Order, Tennessee shall file with the ERA within 30 days following each calendar quarter, quarterly reports indicating: (1) for purchases made under the regular purchase provisions of the contract, by month, the quantities of the gas in MMcf imported by Tennessee and the average cost, on a MMBtu basis, paid by Tennessee for both the demand and commodity components, and (2) separately for transactions under the "special purchase gas" provision: whether sales of imported gas have been made, and if so, giving, by month, the total MMcf of the imports and the average purchase price per MMBtu at the border. These second reports shall also provide the details of each transaction, including the names of the sellers and purchasers, estimated or actual duration of the agreements, transporters, points of entry, markets served, and if applicable, any demand/commodity charge breakdown of the contract price, any special contract price adjustment clauses, or any take-or-pay make-up provisions.

E. The motions to intervene, as set forth in this Opinion and Order, are hereby granted, 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 June 19, 1986.

--Footnotes--

1/ 1 ERA Para. 70,530. Order 32 also applied to Texas Eastern Transmission Corporation, Natural Gas Pipeline of America, and Michigan Wisconsin Pipe Line Company (now ANR Pipeline Company). This application deals solely with the volumes imported by Tennessee and does not affect the other three ProGas customers covered in Order 32.

2/ 49 FR 6684, February 22, 1984.

3/ The intervenors are:

- (1) Northern Indiana Public Service Company
- (2) Consolidated Gas Transmission Corporation
- (3) Public Service Electric and Gas Company
- (4) The Brooklyn Union Gas Company
- (5) ProGas Limited
- (6) Columbia Gas Transmission Corporation
- (7) New England Customer Group
- (8) Consolidated Edison Company of New York, Inc.
- (9) Orange and Rockland Utilities, Inc.
- (10) Long Island Lighting Company

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

5/ See supra note 2.

6/ Motion of Long Island Lighting Company for Leave to Intervene Out Of Time and General Statement of Support, page 4.

7/ See supra note 1, at mimeo 1 and 12.

8/ 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 within the meaning of the National Environment Policy Act (42 U.S.C. 4321, et seq.) and therefore an environmental impact statement or environmental assessment is not required.