Cited as "1 ERA Para. 70,664"

Petro-Canada Hydrocarbons Inc. (ERA Docket No. 86-11-NG), August 26, 1986.

DOE/ERA Opinion and Order NO. 141

Order Granting Authorization to Import Natural Gas From Canada

I. Background

On February 18, 1986, Petro-Canada Hydrocarbons Inc. (PCH) 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 authorization to import up to 20,500 Mcf per day of Canadian natural gas, not to exceed a total of 150 Bcf over a 20-year period, beginning on or about July 1, 1986, or as soon thereafter as the necessary regulatory and transportation arrangements can be structured. The applicant, a corporation registered in the State of Delaware, is a wholly-owned subsidiary of Petro-Canada Inc. (PCI), a Canadian corporation. PCI, in turn, is a wholly-owned subsidiary of Petro-Canada, a company owned entirely by the Government of Canada.

PCH states that all of the natural gas for which import authorization has been requested would be imported via the import point near Sumas, Washington, and resold directly to the United States Borax & Chemical Corporation (Borax) for use at its sodium borate ore processing facility at or near Boron, California. Most of the gas which PCH proposes to import would come from gas wells owned by the exporter, PCI, which are located in British Columbia. Transportation of the gas from the Canadian border to the California border would be either through pipelines owned by Northwest Pipeline Corporation (Northwest) or Pacific Gas Transmission Company (PGT), or both, or by the El Paso Natural Gas Company (El Paso). Transportation from the California border to Borax's facilities at Boron, California, would be via intrastate pipelines owned by the Pacific Gas and Electric Company (PG&E). Only existing facilities would be used to transport the gas which PCH proposes to import.

In its application, PCH requested confidential treatment of the pricing mechanism for determining the selling price of the gas at the border on the grounds that disclosure would permit competitors to compute Borax's cost of manufacturing and would also harm Petro-Canada's competitive position. On May 1, 1986, the ERA denied PCH's request for confidentiality on the grounds that

the selling price of competitively priced gas is readily discoverable from public sources and thus is not confidential, and that disclosure would permit the public to effectively comment on the import proposal.

Under the terms of the natural gas purchase agreement between PCH and PCI dated January 1, 1986, the delivered price of the gas to PCH at the interconnection between the pipeline facilities of Westcoast Transmission Company Limited and Northwest near Huntingdon, British Columbia, would be determined starting with an initial base price of $4.10 per MMBtu. The initial base price, less transportation expenses paid by PCH to deliver the gas to Borax, would be adjusted monthly based on changes in the price at which PCH resells the gas to Borax, which, in turn, is determined monthly in response to changes in the average acquisition cost for natural gas in California and the average world crude oil price. The selling price to PCH, however, may not be lower than the Canadian natural gas export floor price for exports from British Columbia.

Each year under the gas purchase agreement between PCI and PCH, PCH must take or pay for 70 percent of the annual contract quantity. PCH can carry over to the next year any amount of gas paid for but not taken in excess of 50 percent of the annual contract quantity as prepaid gas. This prepaid gas can be recovered in any subsequent contract year once PCH has taken 70 percent of the annual contract quantity for such subsequent year. However, if at any time the prepaid gas that PCH is carrying exceeds 50 percent of the annual contract quantity, further accrual of take-or-pay obligations is suspended until the prepaid volumes drop below the 50 percent of annual contract quantity level. Any take-or-pay adjustment or annual contract quantity adjustment made under the PCH/Borax gas supply contract will automatically be reflected in the PCH/PCI contract so that PCH's annual contract quantity and take-or-pay obligations are consistent with Borax's requirements for natural gas.

In a letter filed with the ERA dated February 18, 1986, Borax stated that it could have switched its fuel source from gas to oil or continued to purchase gas from PG&E but chose to purchase gas from PCH in order to obtain a firm, secure source of supply of natural gas at competitive prices to satisfy its manufacturing requirements. PCH states in its application that Canadian gas has long been a secure and dependable source of natural gas supply. In addition, PCH states that since the import arrangement was negotiated at arm's length with the ultimate industrial consumer of the gas, the marketability of the gas and need for the proposed import are thereby established.

II. Interventions and Comments

The ERA issued a notice of the application on May 20, 1986, with protests, motions to intervene, or comments to be filed by June 30, 1986.1/ Motions to intervene, without comment or request for additional procedures, were received from Southern California Gas Company, Northwest, and El Paso. PGT filed a motion to intervene in opposition to PCH's application but did not request additional procedures. This order grants intervention to all movants.

PGT contends that PCH's failure to file with the ERA a copy of PCH's gas supply contract with Borax and to disclose the pricing terms of its gas purchase contract with PCI made it impossible to evaluate the chain of contracts to the end user. PGT argues that such an evaluation is necessary to assure that the terms of PCH's import arrangement would be competitive. PGT also contends that PCH's import proposal to serve Borax is duplicative of the service that PGT has been providing through PG&E since 1960.

PCH states in a July 15, 1986, answer to PGT's comments that the pricing terms of the PCH/PCI contract have been disclosed but that disclosure of the PCH/Borax agreement is not necessary because the proposed import would be a direct sale of gas negotiated at arms length with Borax, the ultimate consumer, not a sale for resale in interstate commerce. According to PCH, this means that need, marketability, and competitiveness of the gas are clearly established inasmuch as Borax would not have entered into the gas supply arrangement with PCH rather than with other suppliers such as PG&E if this were not the case. Rather than duplicating PG&E's service, PCH argues that it would provide more satisfactory service to Borax than PG&E and PGT.

III. Decision

PCH'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." 2/ In making this finding, the Administrator of the ERA is guided by the DOE's statement of policy relating to the regulation of natural gas imports.3/ Under this policy, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

The only opposition to the application was filed by PGT who contends that the competitiveness of the import cannot be evaluated since the pricing terms for the gas to be sold to PCH and the terms of the gas supply contract between PCH and Borax were not disclosed. Moreover, PGT contends that the proposed import would duplicate PGT's Canadian gas service to Borax, and thus implies it is not needed.

The ERA has required PCH to disclose the pricing mechanism in PCH's gas purchase agreement with the exporter, PCI. However, the ERA concludes that disclosure of the terms under which the imported gas would ultimately be sold to the end user is not necessary in order to evaluate the competitiveness of the import. This is a direct sale to a single, industrial end user, Borax. There are no other downstream customers. Borax freely negotiated the terms of its gas supply arrangement with PCH, and, according to Borax's letter of January 18, 1986, it chose the PCH import arrangement over oil or PG&E's gas service because it judged PCH's proposed arrangement to be more satisfactory for its needs. Therefore, even without knowing the precise terms of Borax's gas supply agreement, it is apparent that if the gas was not needed, marketable, or competitive with alternative fuels, the Borax/PCH gas supply contract would not have been entered into. Accordingly, the proposed import arrangement is determined to be competitive and needed.

Further, the PCH/PCI contract affords considerable flexibility for adjusting both the price of the gas and the volumes imported to assure competitiveness with alternative fuels over the life of the contract while being responsive to Borax's needs. For example, the selling price of the gas must be adjusted monthly to reflect changes in the price of gas paid by Borax and changes in the price of alternative fuels. Annual contract volumes are to be adjusted in accordance with Borax's gas supply needs. Furthermore, some of PCH's take-or-pay obligations may be made up in future contract years under the make-up provisions in the PCH/PCI gas purchase contract. Therefore, pricing and take-or-pay provisions of the PCH/PCI import arrangement should ensure that gas will be imported only if it is needed and fully competitive.

Although the proposed import arrangement would run for a 20-year term, no intervenor has raised security of supply as an issue. Further, Canadian gas has long been a secure source of supply, and in this case, most of the gas imported would come from gas owned by the exporter. Accordingly, there is no reason to believe that Canada would be an insecure source of the gas which PCH proposes to import.

Since the proposed import would be a direct sale to a single, industrial end user, no captive gas consumers are affected. The only gas consumer affected, Borax, has supported the arrangement as one which was freely negotiated and competitive. The ERA believes that PCH and Borax, who are the market participants who stand to benefit or suffer as a result of the proposed importation, are fully capable of assessing the risks without government assistance or interference.

PGT, in its comments, implied that this import is not needed because

PG&E already provides gas service to Borax. The policy of this agency is to foster competition, and this long-term direct sale arrangement will bring additional market forces into play in the California market. The ERA does not intend to protect existing long-term arrangements from competition arising from direct sales to end users. As PGT indicated in its comments, PGT has options available to meet such competition, as do other pipelines, such as adopting to the FERC's Order No. 436 open access requirements or offering gas supply arrangements that are competitive with third party direct sales.

After taking into account all the information in the record of this proceeding, I find that the authorization requested by PCH will not be inconsistent with the public interest and should be granted.4/

ORDER

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

A. Petro-Canada Hydrocarbons Inc. (PCH) is authorized to import up to 20,500 Mcf per day and up to a total of 150 Bcf of Canadian natural gas during a 20-year period commencing on the date of first delivery.

B. PCH shall notify the ERA in writing of the date of first delivery of gas authorized in ordering paragraph A within two weeks after deliveries begin.

C. PCH shall file with the ERA within 30 days following each calendar quarter, quarterly reports showing, by month, the quantities of natural gas in MMcf imported under this authorization, and the average price per MMBtu paid for those volumes at the international border. The price information should include a demand/commodity charge breakdown, if applicable.

D. 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 may be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., on August 26, 1986.

--Footnotes--

1/ 51 FR 19384, May 29, 1986.

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

3/ 49 FR 6684, February 22, 1984.

4/ Because the proposed importation of gas will use existing pipeline facilities, the 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.