

Cited as "1 ERA Para. 70,677"

Northwest Marketing Company (ERA Docket No. 86-26-NG), November 7, 1986.

DOE/ERA Opinion and Order No. 154

Order Granting Blanket Authorization to Import Natural Gas From Canada

I. Background

On April 15, 1986, Northwest Marketing Company (Northwest Marketing) 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 150 MMcf per day of Canadian natural gas over a two-year period beginning on the date of first delivery. Northwest Marketing is a wholly-owned subsidiary of Northwest Energy Company, one of the Williams Companies.

The applicant proposes to import volumes of gas purchased from various Canadian suppliers for sale in U.S. markets for its own account or as agent for others desiring to either sell or purchase natural gas under short-term arrangements. The gas would be imported through existing facilities only at the United States-Canada border located at Sumas, Washington, at East Port, Idaho, (Kingsgate, British Columbia), or at Morgan Port, Montana (Monchy, Saskatchewan). Northwest Marketing proposes to file quarterly reports on the specifics of each transaction within a month following each calendar quarter.

II. Interventions and Comments

The ERA published a notice of the application on April 29, 1986, inviting protests, motions to intervene, notices of intervention, and comments to be filed by May 29, 1986.^{1/}

Motions to intervene without comment or request for additional procedures were filed by Southern California Gas Company, El Paso Natural Gas Company, Pacific Gas Transmission Company and Southwest Gas Corporation. ICG Energy Marketing Inc. (ICG Marketing) and ITRP/Kimball Gas Ventures (Gas Ventures) each filed a motion to intervene, comments, and a request for a condition. Mountain Fuel Resources Inc. (MFR) filed a motion to intervene, protested the proposed import authorization, and requested a dismissal of the application or, alternatively, a technical conference. On June 13, 1986, Northwest Marketing filed an answer to the comments of ICG Marketing and Gas Ventures as well as an answer to MFR's protest. This order grants intervention

to all movants.

ICG Marketing, a wholly-owned U.S.-based subsidiary of Inter-City Gas Corporation, a Canadian corporation, states that, although it does not oppose the application, it is concerned that the applicant's affiliation with Northwest Pipeline Corporation (Northwest) may be used to the detriment of other would-be transporters of gas on the Northwest pipeline system. ICG Marketing contends that since Northwest has not applied ^{2/} to the Federal Energy Regulatory Commission (FERC) to participate in the Order No. 436 open access program,^{3/} the ERA should add a condition to any import authorization granted Northwest Marketing to prohibit the applicant from delivering natural gas into the facilities of Northwest, whether for sales or transportation on its own behalf or as agent for others, except on terms and conditions that are equally available to non-affiliated entities.

Gas Ventures similarly states that it does not oppose Northwest Marketing's request for an import authorization nor does it seek additional proceedings in the matter. However, it states that any order granting import authorization to Northwest Marketing should be conditioned to require that access to Northwest's pipeline facilities shall be nondiscriminatory in relation to other, unaffiliated sellers and marketers of natural gas in those markets served by Northwest. Gas Ventures states that such condition would be consistent with the policies of the FERC concerning open and nondiscriminatory access to pipelines for the transportation of natural gas announced in its Order No. 436.

Northwest Marketing responded by requesting the ERA to deny these requests for condition. Northwest Marketing agrees that it should be treated no differently than all other importers of natural gas by Northwest, but argues that the requested condition is not needed to achieve the desired equal treatment. It contends that, under the provisions of Sections 4(b) and 5(a) of the NGA, Northwest and all interstate pipelines are obligated to avoid giving undue preference to one customer over another with respect to the transportation or sale of natural gas in interstate commerce. Northwest Marketing asserts that the FERC, not the ERA, has jurisdiction over these matters and, if a complaint of discrimination related to sales or transportation transactions between it and Northwest arises, that the FERC would be the proper forum in which to address such complaint. Northwest Marketing further contends that the requested condition has no bearing on whether the import itself is consistent with the public interest test of Section 3 of the NGA, but rather relates to speculative concerns that might arise with one potential downstream interstate transporter of its imported natural gas. For these reasons, Northwest Marketing believes that the proposed

condition is not necessary and requests that it be denied.

MFR's protest and request for a conference is based on its contention that granting the requested import authorization may provide a possible pricing subsidy to Northwest Marketing and give it an improper, advantageous marketing position. MFR contends that it and other low-load customers of Northwest will be used to subsidize Northwest Marketing, thereby allowing it to make incremental purchases of gas from Westcoast Transmission Company Ltd. (Westcoast), Northwest's Canadian supplier, at a price below the average rolled-in cost of Westcoast's gas supplies to Northwest. MFR alleges that, because the low-load customers pay a large portion of Westcoast's fixed cost of operations through their payments of Northwest's demand charges, 54 percent of which go to pay Westcoast's demand charge to Northwest, Westcoast may be able to sell Northwest Marketing incremental volumes for import under this requested authorization at lower "subsidized" prices.

MFR believes that it is reasonable to assume that Westcoast will be among Northwest Marketing's chief suppliers since two of its proposed import entry points coincide with Westcoast's delivery points to Northwest. Further, because Northwest Marketing does not identify its sources of supply and transporters, specify the expected price to be paid for the imported gas, nor provide any information showing that the proposed imports are needed, secure or competitive, MFR protests Northwest Marketing's application as being an insufficient filing that does not conform to the DOE's policy guidelines^{4/} and which appears to be anticompetitive by virtue of the potential price subsidy. MFR requests the ERA to reject the application or to convene a technical conference where Northwest Marketing would be required to provide additional information concerning the details of its proposed import arrangement.

Northwest Marketing answered MFR's protest asserting that MFR's alleged subsidy fears are misplaced and that it has provided sufficient information for the ERA to grant the blanket authorization request without additional procedures. Northwest Marketing contends that MFR's subsidy argument is not applicable to its requested import authorization because the \$72 million demand charge paid by Northwest represents only a percentage of Westcoast's total fixed costs attributable to its service to Northwest as only one customer on Westcoast's system and is not directly related to any potential service to Northwest Marketing. To the extent that it may purchase gas from Westcoast, Northwest, Marketing states that it would be as an interruptible sales customer bearing such portion of Westcoast's fixed costs for that type of service as prescribed by Canada's National Energy Board (NEB) regulations, rate schedules and the approved minimum price for exported natural gas. Further, Northwest Marketing points out that simply because two of its three

proposed import points are Westcoast delivery points to Northwest, it does not conclusively follow that Westcoast will be one of its chief suppliers.

Further, Northwest Marketing points out that its application states that the sales will be spot or short-term sales, freely negotiated at arm's length and market-responsive or else the gas will not be imported. Thus, Northwest Marketing contends that the application meets all of the import criteria established by the DOE for blanket authorization. Northwest Marketing contends that MFR's allegation that any gas purchased by it from Westcoast may be anticompetitive by virtue of an improper and illegal subsidy is unfounded, inconclusive and does not overcome the presumption of the competitiveness of the proposed import arrangement contemplated by the DOE's policy guidelines. Northwest Marketing asserts that the ERA can make a decision on its application without additional procedures. Accordingly, Northwest Marketing requests that the ERA dismiss the protest, deny the request for a conference, and grant its request for import authorization.

III. Decision

The application filed by Northwest Marketing and all comments and replies received in this proceeding have 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." 5/ The Administrator is guided in this determination by the DOE's natural gas policy guidelines.^{6/} Under these guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

The ERA has given serious consideration to the arguments by Gas Ventures and ICG Marketing that any import authorization granted to the applicant be conditioned to prevent Northwest Marketing from delivering imported gas into the facilities of Northwest, either for sale or transportation, except on terms and conditions equally available to non-affiliated marketers. The concerns expressed here have been raised before.^{7/} Paralleling the acceleration of short-term gas sales and the emergence of numerous pipeline affiliated marketing companies, there is an apparent growing belief among independent gas marketers and producers that affiliated marketers receive preferential treatment from their pipeline affiliates and therefore are better able to arrange delivery of spot gas than independent marketers.

The ERA believes that the FERC is the proper forum for the examination of affiliate relationships or for review of any specific complaints or charges

of undue preference or discrimination in either the interstate transportation or sale of natural gas, whether it be domestically produced or imported. Clearly, the requested condition duplicates the prohibitions of Section 4(b) of the NGA. Section 4(b) prohibits any natural gas company, with respect to the sale of natural gas in interstate commerce, from granting any undue preference or advantage to any person, or subjecting any person to undue prejudice or disadvantage, or maintaining any unreasonable difference in rates between localities or between classes of services. Further, Section 5(a) of the NGA gives the FERC the authority to examine and resolve unduly discriminatory or preferential rates for the transportation or sale of such gas. The FERC has recently agreed to explore, on at least a preliminary basis, the allegations pertaining to the marketing activities and interrelationships between non-jurisdictional marketing affiliates and pipelines subject to the provisions of Section 4 and 5 of the NGA.^{8/}

Based on the above, the ERA concludes that the requested condition duplicates protections already in place and within the oversight of the FERC. Accordingly, the request for condition is denied.

MFR's request that the ERA reject the application as deficient or convene a conference to establish further details of the proposed arrangement is centered on its concerns about the lack of identity of the applicant's prospective Canadian suppliers, transporters and purchasers and Northwest Marketing's alleged potential competitive advantage over MFR and other marketers. MFR alleges that the applicant might negotiate a possible subsidized gas price with Westcoast by reason of the high demand charges paid to Northwest by MFR and other low-load customers for system supply gas sold by Westcoast.

With respect to MFR's first concern, the ERA some time ago determined that it can find short-term blanket import arrangements, such as the one requested here, to be competitive and in the public interest even through advance notification of the precise terms of each anticipated transaction is not provided. In those instances where the proposed purchases and sales of the imported gas are limited to two years or less, the transactions are market-responsive and negotiated at arms-length, and the importer agrees to provide appropriate quarterly reports which adequately safeguard the public interest in each arrangement, the ERA has granted a blanket import authorization.^{9/}

The ERA disagrees with MFR's allegation that the applicant's price for imported volumes may be illegally subsidized due to the passthrough by Northwest of demand charges covering 60 percent of Westcoast's fixed costs. No

showing has been made of any relationship between the payments made for those costs under Westcoast's long-term system supply contract with Northwest and the price to be paid for natural gas purchased from Westcoast by Northwest Marketing under this authorization. While MFR alleges that Westcoast will be one of the applicant's chief suppliers of gas, the ERA is persuaded by the applicant's contention that Westcoast is only one of Northwest Marketing's potential Canadian sources of gas. The coincidence of the two import delivery points used by Northwest Marketing and Northwest is inconclusive of the applicant's intended sources of gas supply and is merely indicative of possible downstream transporters of Northwest Marketing's proposed imports.

In view of the foregoing, the ERA is not persuaded by MFR's arguments for rejecting Northwest Marketing's application as deficient and its request is denied. Further, MFR has not provided a specific showing why the requested conference would materially advance this proceeding as required by 10 CFR 590.311 of the ERA's administrative procedures. Accordingly, MFR's request for a conference is denied.

The fact that each sale under this proposed import authorization will be voluntarily negotiated, short-term, and market-responsive provides assurance that the transactions will be competitive. Thus, this, like other similar blanket imports^{10/} approved by the ERA, will enhance competition in the marketplace.

After taking into consideration all of the above, I find that granting Northwest Marketing blanket authority to import up to 150 MMcf of Canadian natural gas per day for a term of two years 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. Northwest Marketing Company (Northwest Marketing) is authorized to import up to 150 MMcf of Canadian natural gas per day for a two-year period beginning on the date of first delivery.

B. This natural gas may be imported at any point on the international border where existing pipeline facilities are located.

C. Northwest Marketing 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 date of such delivery.

D. With respect to the imports authorized by this Order, Northwest Marketing shall file with the ERA within 30 days following each calendar quarter, quarterly reports indicating whether sales of imported gas have been made, and if so, giving, by month, the total volume in MMcf of the imports and the average purchase price per MMBtu paid at the border. The 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 clause, and any take-or-pay or make up provision.

E. The request by Mountain Fuel Resources, Inc., that the application be rejected or that a conference be held to develop more information is denied. The requests of ICG Energy Marketing Inc. and ITRP/Kimball Gas Ventures to condition this order to prohibit Northwest Marketing from arranging delivery of imported gas to its affiliate's pipeline facilities for sale or transportation except on terms and conditions equally available to non-affiliated entities are also denied.

F. The motions to intervene, as set forth in this Opinion and Order, are hereby granted, provided that participation of each intervenor shall be limited to matters specifically set forth in its motion to intervene and not herein specifically denied and that the admission of each intervenor shall not be construed as recognition that it might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C. on November 7, 1986.

--Footnotes--

1/ 51 FR 15960, April 29, 1986.

2/ On June 20, 1986, Northwest Pipeline Corporation filed with the FERC for Order No. 436 certification in FERC Docket No. CP86-578-000.

3/ FERC's Order 436 established a voluntary program under which a pipeline agrees to provide non-discriminatory transportation for all customers on a first-come, first-served basis. Open-access to such transportation would allow non-traditional suppliers such as independent producers, to ship their gas to any market where they could find customers. FERC Statutes and Regulations Para. 30,665.

4/ 49 FR 6684, February 22, 1984.

5/ 15 U.S.C. Sec. 717b.

6/ See supra note 4.

7/ See e.g., El Paso Gas Marketing Company, 1 ERA Para. 70,638 (March 27, 1986).

8/ Hadson Gas Systems Inc. (FERC Docket No. RM 86-19-000). On August 7, 1986, Hadson petitioned the FERC to initiate a generic rulemaking proceeding to examine the potentially anticompetitive impact on the natural gas markets of non-jurisdictional, affiliated gas marketing companies. On September 11, 1986, the FERC requested its legal staff to expedite preparation of a recommendation on Hadson's generic rule request, thus indicating its interest in fully exploring the discrimination charges surrounding marketing affiliates and pipelines.

9/ See e.g., Tennessee Gas Pipeline Company, DOE/ERA Opinion and Order No. 151, unpublished (November 6, 1986); Western Gas Marketing U.S.A., Ltd., DOE/ERA Opinion and Order No. 152, unpublished (November 6, 1986); and Enron Gas Marketing Inc., DOE/ERA Opinion and Order No. 153, unpublished (November 6, 1986).

10/ See e.g., Czar Resources Inc., 1 ERA Para. 70,660 (July 17, 1986); Canadian Natural Gas Clearing House (U.S.) Inc., 1 ERA Para. 70,661 (July 31, 1986); Spot Market Corporation, 1 ERA Para. 70,665 (August 27, 1986); and CU Energy Marketing Inc., 1 ERA Para. 70,669 (September 23, 1986).

11/ Because the proposed importation of gas will use existing pipeline facilities, the DOE has determined that granting this application is clearly not a major 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.