Cited as "1 ERA Para. 70,726"

Tennessee Gas Pipeline Company (ERA Docket No. 87-28-NG), October 9, 1987.

DOE/ERA Opinion and Order No. 195

Order Granting Authorization to Import Certain Quantities of Natural Gas from Canada, Conditionally Authorizing Import of Certain Additional Quantities of Natural Gas and Granting Intervention

I. Background

On May 22, 1987, 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), for authorization to import a volume of Canadian natural gas increasing gradually from 5,000 up to 125,000 Mcf per day over a term commencing November 1, 1987, until October 31, 2002. Tennessee proposes to purchase gas from KannGaz Producers Ltd. (KannGaz) to be delivered to Tennessee through an existing inter-connection with TransCanada PipeLines Limited (TransCanada) near Niagara Falls, New York. Concurrently with this application Tennessee withdrew a pending application for an import authorization in ERA Docket No. 82-10-NG originally filed on August 10, 1982, embracing generally the same volumes as this new import proposal.

Tennessee asserts that events and extensive renegotiation of the contract provisions have overtaken the initial arrangement. Tennessee states that its new arrangement with KannGaz for which it requests approval supersedes all prior arrangements. According to Tennessee, the new contract restructures the initial proposal to meet its current and future needs and fully conforms to the DOE policy guidelines for natural gas imports.1/

Tennessee's 1987 precedent agreement dated May 12, 1987, provides for a phased gas purchase schedule beginning on November 1, 1987, and ending October 31, 2002, as follows:

Period	Daily Contract Quantity in Mcf
November 1, 1987 to October 31, 1988	5,000

November 1, 1988 to October 31, 1989	29,900
November 1, 1989 to October 31, 1990	79,700
November 1, 1990 to October 31, 2002	125,000

The daily contract quantity (DCQ) may be adjusted by the parties but cannot exceed 125,000 Mcf.

The proposed 1987 gas purchase contract provides that Tennessee will, on a monthly basis, take or pay for 20 percent of the contract quantity in effect during the month. This is the minimum monthly quantity (MMQ) which is defined as, for any given calendar month, a volume of gas equal to 20 percent of the DCQ in effect for the month times the number of days in such month. For any gas taken in excess of the MMQ, a commodity rate is to be established by negotiation between the parties prior to the month of delivery. Tennessee is required to inform KannGaz of the estimated volumes of gas it will take at this negotiated rate. Tennessee states that, while it will make its best efforts to take those estimated volumes, it does not have any take-or-pay obligation with respect to those volumes. However, Tennessee has the right to take at this negotiated rate the remaining volume of gas representing the difference between the MMQ and the DCQ, thereby providing an opportunity to purchase natural gas at an assured competitive rate without added take-or-pay exposure. Various other contract provisions allow Tennessee opportunities to recover its take-or-pay costs.

Under its agreement, Tennessee will contract with KannGaz for the indicated volumes of natural gas at a price structured as a two-part rate. The demand charge will be the sum of (i) the monthly demand toll per Mcf on the TransCanada system as determined by Canada's National Energy Board (NEB) and in effect on the first day that the firm gas is transported by TransCanada for this import, and (ii) the monthly demand toll per Mcf as billed to KannGaz by NOVA, an Alberta Corporation, for its transportation of the gas to TransCanada's system. The base commodity rate for the MMQ will be determined by Tennessee's weighted average cost of gas (WACOG) per MMBtu purchased from domestic producers in the field as reflected in its purchased gas adjustment (PGA) filing with the Federal Energy Regulatory Commission (FERC) on the first day of the month in which gas is delivered under this arrangement. According to the PGA filing currently in effect, for example, Tennessee's WACOG is $1.7455 per MMBtu.

The agreement also provides that with proper notice either party can request a meeting of the parties to negotiate modification of the pricing provision to permit, as the parties agree, the anticipated downstream sales of the imported gas.

II. Procedural History

The ERA issued a notice of Tennessee's August 10, 1982, application in ERA Docket No. 82-10-NG on September 29, 1982.2/ Tennessee subsequently amended its application on May 3, 1983, and September 17, 1985, to reflect renegotiated contract provisions such as revised gas volumes and alterations to proposed transportation systems.3/ On March 13, 1986, the ERA issued an order soliciting written comments from Tennessee and interested parties on various issues raised by the import application.4/ Tennessee requested and received an indefinite extension of time to comment but no further action occurred until Tennessee filed a notice of withdrawal of its application in ERA Docket No. 82-10-NG pursuant to 10 CFR Sec. 590.204(c) and concurrently filed this new application in this proceeding. By letter dated June 24, 1987, the ERA advised Tennessee and all intervenors that the notice of withdrawal became effective on June 22, 1987, and that the proceeding in ERA Docket No. 82-10-NG was terminated. The ERA issued a notice of the new application on July 2, 1987.5/

Timely motions to intervene in this docket without request for additional procedures were received from Texas Eastern Transmission Corporation, Northern Illinois Gas Company (NIGAS), Consolidated Gas Transmission Corporation, The Brooklyn Union Gas Company, Public Service Electric and Gas Company, Columbia Gas Transmission Corporation, New England Customer Group,6/ Long Island Lighting Company (LILCO), Northwest Alaskan Pipeline Company, KannGaz, and Consolidated Edison Company of New York, Inc. LILCO and KannGaz provided brief general statements in support of Tennessee's proposal.

NIGAS requested an opportunity to supplement its motion if the FERC's policy on the as-billed treatment of costs of imported gas as presently applied to Tennessee is collaterally attacked in this proceeding. No such attack was made or is being considered here. This order grants intervention to all movants.

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." 7/ In making this finding, the ERA Administrator is guided by the DOE's natural gas import policy guidelines.8/ Under this policy, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

Tennessee asserts that the pricing provisions contained in its 1987 gas purchase contract with TransCanada assure that the imported gas will be marketable over the term of the contract. Thus, Tennessee submits that this import will be competitively priced and needed. The ERA concurs that this new arrangement will provide for an import that will be competitive in the markets served over the term of the arrangement. Only a small portion of the MMQ will be subject to a take-or-pay obligation and the price of that volume is based on domestic price determinations. The pricing provisions, the periodic review provisions and the progressive annual takes built into this new arrangement clearly support a conclusion that the proposed import will be market responsive and competitively priced. Therefore, the ERA finds that the arrangement will be competitive over the term of the contract.

The need for the gas can be addressed in terms of its marketability, which relates to the competitiveness of the import and the flexibility of contract terms that will allow it to remain competitive throughout the term of the import arrangement. As stated above, the Tennessee/KannGaz import arrangement will provide Tennessee with imported gas that will be competitive in Tennessee's market areas over the term of the agreement. Tennessee proposes to use this gas for resale to its customers and no party has disputed the need for this import. Therefore, the ERA finds that the gas to be provided by this proposed import will be needed throughout the term of the arrangement.

There is no dispute as to the security of the Canadian supply of natural gas nor of the ability of KannGaz, an established supplier, to supply the gas for this contractual commitment from reserves available to it over the term of the requested authorization. The imported gas will be produced from Canadian reserves located in the Province of Alberta. The availability of these reserves is established by the Energy Resources Conservation Board of Alberta by issuance of Removal Permit KG85-1 authorizing removal of the gas from Alberta, and by the NEB through issuance of its License GL-77 authorizing the removal of such gas as may be sold through this import arrangement. These existing permits, coupled with the historical dependability of the Canadian gas supply, provide an adequate demonstration that the contemplated import is securely supported. Therefore, the ERA finds the import will not lead to any undue dependence on an unreliable source of supply nor otherwise compromise the energy security of the nation over the contract period.

After taking into consideration all of the information in the record of this proceeding and the absence of opposition to Tennessee's proposal, I find that granting Tennessee authorization to import natural gas in accordance with the provisions of its May 12, 1987, precedent agreement with KannGaz for the stated volumes of gas from November 1, 1987, thru October 31, 2002, is not inconsistent with the public interest.

Tennessee states that existing facilities will be used to receive and transport 5,000 Mcf per day and it has pending at the FERC in Docket No. CP87-131 an application for authorization to construct and operate the additional facilities required for future receipt and transport of the full 125,000 Mcf per day of gas. Tennessee's need for the additional new facilities to transport the maximum requested import quantity triggers an environmental review under the National Environmental Policy Act (NEPA) of the impacts of both the import authorization and the related construction. NEPA requires agencies to give appropriate consideration to the environmental effect of their proposed actions: in the ERA's case, the authorization to import natural gas, in the FERC's case, the certificate of public convenience and necessity to construct and operate new facilities.9/ The FERC has the lead for developing the environmental review of the impacts of the new facilities needed to accommodate the import volumes requested in excess of existing capacity.

The approval of this import of natural gas in excess of 5,000 Mcf per day is therefore being conditioned on completion of the environmental review of the new facilities to transport the additional volumes.10/ When the FERC has completed its environmental work, the ERA will perform an environmental review based on the FERC's analysis, reconsider this order, and issue a final opinion and order with respect to the volumes in excess of the 5,000 Mcf per day given final approval here. Insofar as the additional future quantities of imported natural gas are concerned, this decision indicates to the parties the ERA's determination on all but the environmental issue in this proceeding.

ORDER

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

A. Tennessee Gas Pipeline Company (Tennessee) is authorized to import Canadian natural gas in accordance with its May 12, 1987, precedent agreement with KannGaz Producers Ltd. (KannGaz) up to the quantities and for the term as set forth in the following schedule:

Period	Daily Contract Quantity in Mcf
November 1, 1987 to October 31, 1988	5,000
November 1, 1988 to October 31, 1989	29,900
November 1, 1989 to October 31, 1990	79,700
November 1, 1990 to October 31, 2002	125,000

B. Except for daily volumes of 5,000 Mcf, the importation of the volumes authorized in Ordering Paragraph A is conditioned upon the issuance of a final Economic Regulatory Administration order after review by the Department of Energy (DOE) of the Federal Energy Regulatory Commission's environmental analysis and completion of the DOE's National Environmental Policy Act responsibilities in connection with the new facilities required for the transportation of the additional authorized volumes.

C. 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.

D. Except for 5,000 Mcf per day, the authorization granted in Ordering Paragraph A is subject to the condition stated in Ordering Paragraph B, the resolution of which may result in further conditions imposed in subsequent proceedings in this case. Tennessee and intervenors in this proceeding shall be bound by opinions and orders issued in such subsequent proceedings.

E. Tennessee 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. The reports shall identify the demand and commodity charges paid on a monthly and per unit (MMBtu) basis for those volumes at the international border.

Issued in Washington, D.C. on October 9, 1987.

--Footnotes--

1/ 49 FR 6684, February 22, 1984.

2/ 47 FR 44135, October 6, 1982.

3/ 48 FR 29042, January 24, 1983; 50 FR 42753, October 22, 1985.

4/ Tennessee Gas Pipeline Company, ERA Docket Nos. 81-24-NG and 82-10-NG, Order Requesting Certain Additional Information from Applicant, Providing Opportunity For Further Comment From All Intervenors, and Granting Interventions (March 13, 1986).

5/ 52 FR 25908, July 9, 1987.

6/ Intervenors in The New England Customer Group include:

The Berkshire Gas Company

Blackstone Gas Company

Boston Gas Company

Colonial Gas Company

Commonwealth Gas Company

Concord Natural Gas Corporation

The Connecticut Natural Gas and Power Company

Connecticut Natural Gas Corporation

EnergyNorth, Inc.

Essex County Gas Company

Fitchburg Gas and Electric Light Company Boston Gas

Granite State Gas Transmission Inc.

City of Holyoke, Massachusetts Gas and Electric Department

The Southern Connecticut Power Gas Company

Valley Gas Company

City of Westfield Gas and Electric Light Department

7/ 15 U.S.C. Sec. 717(b).

8/ See supra note 1.

9/ In DOE Delegation Order 0204-112 (49 FR 6690, February 22, 1984) the Secretary delegated to the FERC the authority for "approval or disapproval of the construction and operation of particular facilities . . ." for imports and exports.

10/ Because the proposed importation of 5,000 Mcf per day of gas will use existing pipeline facilities, the DOE has determined that granting this request for that volume 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.