Cited as "1 ERA Para. 70,737"

Great Lakes Gas Transmission Company; Northern Minnesota Utilities (ERA Docket No. 87-31-NG), November 25, 1987.

DOE/ERA Opinion and Order No. 207

Order Reassigning an Import Authorization and Granting Authority to Import Additional Interruptible Volumes of Canadian Natural Gas

I. Background

On June 25, 1987, Great Lakes Gas Transmission Company (Great Lakes) and Northern Minnesota Utilities (Northern Minnesota) filed a joint 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 permit Northern Minnesota to import directly up to 5,000 Mcf of Canadian natural gas per day which the Federal Power Commission (FPC) previously authorized Great Lakes to import for resale to Northern Minnesota.1/ Great Lakes, an interstate pipeline, is a corporation registered in the State of Delaware and has its principal place of business in Detroit, Michigan. Northern Minnesota is a local distribution company whose principal place of business is in Cloquet, Minnesota, and is a subsidiary of Utilicorp United, Inc., a Delaware corporation. The applicants state that TransCanada PipeLines Limited (TransCanada) would remain the supplier of the gas and Great Lakes would continue to provide transportation for Northern Minnesota.

In addition to the proposed transfer of the import authority from Great Lakes to Northern Minnesota for 5,000 Mcf per day in firm gas deliveries, Northern Minnesota further requests authorization to import on an interruptible basis from TransCanada up to 10,000 Mcf per day of what applicants refer to as "overrun" volumes, for total import deliveries of up to 15,000 Mcf of Canadian natural gas per day. According to the applicants, the proposed gas purchase contract contains identical pricing provisions and other contract terms as those currently in effect and retains the same termination date of November 1, 1990. The pricing provisions include a monthly demand charge based upon a combination of the tolls of TransCanada and NOVA, the transporting pipeline in Alberta, and a commodity price that is initially $1.60 per MMBtu for firm deliveries and $1.56 per MMBtu for interruptible volumes. The commodity price would be adjusted upward or downward in accordance with an index that takes into account the price of competing fuels in Northern Minnesota's markets.

Pursuant to FPC Opinion No. 577 issued on April 30, 1970,2/ as amended by the Federal Energy Regulatory Commission (FERC) on November 4, 1980,3/ Great Lakes was granted authority to import for resale up to 5,000 Mcf of Canadian natural gas per day for resale to Inter-City Gas Corporation (Inter-City) and, to the extent it was available, interruptible or overrun volumes from TransCanada on a best-efforts basis. Subsequently, on December 5, 1986, the service agreement between Great Lakes and Inter-City was assigned to Northern Minnesota which had purchased all rights and interests in Inter-City's natural gas distribution system properties.

The application includes an April 15, 1987, precedent agreement between Great Lakes, Northern Minnesota and TransCanada, a proposed gas purchase contract between Northern Minnesota and TransCanada, and a proposed transportation service agreement between Great Lakes and Northern Minnesota. According to the precedent agreement, the gas purchase contract and the transportation service agreement would be executed by the respective parties within five days after receipt of all regulatory approvals acceptable to the parties, excluding FERC approval of the gas tariff under which Great Lakes will transport the gas for Northern Minnesota. Effective the first day of the month following the receipt of all regulatory and governmental approvals acceptable to the parties, Northern Minnesota would import the volumes of gas directly from TransCanada; Great Lakes and Northern Minnesota would terminate their purchase gas agreement; and Great Lakes would transport the Northern Minnesota volumes from the Emerson, Manitoba, interconnection to Northern Minnesota's delivery points in accordance with the FERC gas tariff. The transfer of Great Lakes' import authority to Northern Minnesota would authorize Northern Minnesota to import up to 5,000 Mcf per day of firm Canadian gas supplies and up to 10,000 Mcf of interruptible gas volumes per day directly from TransCanada.4/

Great Lakes, Northern Minnesota and TransCanada believe that it is in their mutual interest to "unbundle" the current arrangements. Northern Minnesota will then purchase both firm and interruptible resale volumes directly from TransCanada, and Great Lakes will act solely as a transporter for Northern Minnesota. In the opinion of the applicants, this would allow Northern Minnesota more flexibility in any future price negotiations, and better communication of market signals between Northern Minnesota and TransCanada.

In view of the fact that the FPC approved importation of the subject volumes through November 1, 1990, and this application requests no change of substantive terms and conditions already approved by the FERC,5/ the applicants state that the importation of these TransCanada volumes by Great

Lakes for resale to Northern Minnesota have already been held to be in the public interest. The applicants further maintain that the only significant change occurring relative to this import authorization is a change in the company importing the gas. Accordingly, the applicants assert that information on security of supply, need for the gas, and competitive pricing arrangements are not relevant to this joint application. Finally, the applicants state that no new construction of facilities would be required if Great Lakes' import authority is transferred to Northern Minnesota. Therefore, the applicants contend that no adverse environmental impacts would result from granting this transfer of import authority.

The ERA issued a notice of the application on July 16, 1987, with protests, motions to intervene, or comments to be filed by August 24, 1987.6/ One motion to intervene supporting the application was received from Western Gas Marketing Limited (Western). This order grants intervention to Western.

II. Decision

The joint application filed by Great Lakes and Northern Minnesota has been evaluated to determine if the proposed import arrangement conforms to 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." 7/ The Administrator is guided by the DOE's natural gas import policy guidelines.8/ Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test. The guidelines further require the ERA to consider in authorizing a long-term import arrangement whether there is a need for the gas and whether the supply is secure.

During the last two years, Great Lakes has encouraged Northern Minnesota and its other resale customers to negotiate import arrangements directly with TransCanada. This has resulted in significantly lower prices and more flexible arrangements that include indices that adjust prices in accordance with market conditions.

The ERA believes the "unbundling" contemplated by the proposed arrangement will allow Northern Minnesota more flexibility in future price negotiations and will provide better communication of market signals between Northern Minnesota and TransCanada. The provisions in the proposed new gas purchase agreement which call for the direct negotiation of prices and periodic contract adjustments will be more responsive to market conditions. The agreement contains pricing indices to more accurately reflect changes in the prices of the major competing energy sources in Northern Minnesota's markets, and further provides for arbitration at the request of either party. In the opinion of the ERA, these provisions will not only result in more competitive prices, but will ensure that both buyer and seller will work to mutually resolve all contract disputes. Thus, the gas will remain competitive throughout the term of the arrangement in the markets served.

The need for the gas is addressed in terms of its marketability. In addition to providing for competitive pricing as a result of "unbundling," Northern Minnesota will have increased flexibility in any future price negotiations concerning its imports from TransCanada. The gas provided by this import arrangement has been and will continue to be used by Northern Minnesota as a part of its long-term general system supply. Thus, the arrangement assures that Northern Minnesota will have available to it competitively priced gas for its system supply that will remain, because of the flexibility of the arrangement, marketable over the term of the arrangement.

The security of the gas supply is assured both by the historic reliability of this source of Canadian natural gas and by the fact that TransCanada has contracted to purchase appropriate volumes of gas from producers in the Province of Alberta to fulfill its obligations under this arrangement. Moreover, there has been no change in the contract quantity in the unbundled agreements.

After taking into consideration all the information in the record of this proceeding, I find that transferring authority from Great Lakes to Northern Minnesota to import from TransCanada up to 5,000 Mcf per day in firm natural gas deliveries and up to 10,000 Mcf per day of interruptible volumes through a period ending November 1, 1990, is not inconsistent with the public interest.9/

ORDER

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

A. Great Lakes Gas Transmission Company's authority granted by the Federal Power Commission (FPC) in Opinion No. 577 issued on April 3, 1970, as further amended by the Federal Energy Regulatory Commission (FERC) on November 4, 1980, in Docket CP-70-19, to import firm Canadian natural gas deliveries in addition to any interruptible (overrun) volumes which Great Lakes purchased from TransCanada PipeLines (TransCanada) for resale to Inter-City Gas Corporation (now Northern Minnesota Utilities), is hereby reduced by 5,000 Mcf per day of firm gas supplies.

B. Northern Minnesota is hereby authorized to import on a firm basis up to 5,000 Mcf per day of natural gas by which Great Lakes' authorization is reduced, and up to 10,000 Mcf per day on an interruptible basis, for a maximum of 15,000 Mcf per day during a term from the date of this authorization to November 1, 1990, in accordance with its proposed gas purchase contract with TransCanada.

C. Northern Minnesota shall notify the ERA in writing of the date of first delivery of gas authorized in Ordering Paragraph B within two weeks after deliveries begin.

D. Northern Minnesota 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 report shall also identify the demand/commodity charge incurred on a monthly and per unit (MMBtu) basis.

E. The motion to intervene, as set forth in this Opinion and Order, is hereby granted, provided that participation of the intervenor shall be limited to matters specifically set forth in its motion to intervene and not herein specifically denied, and that the admission of such 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 25, 1987.

--Footnotes--

1/ Great Lakes Gas Transmission Company, 43 FPC 635 (April 30, 1970).

2/ Id.

3/ 13 FERC Para. 61,098.

4/ In addition to this application before the ERA, Great Lakes has applied to the FERC for authorization to (i) terminate the existing Service Agreement with Northern Minnesota under which Great Lakes currently sells the Northern Minnesota and overrun volumes, (ii) abandon such service, and (iii) provide transportation of the Northern Minnesota and overrun volumes after unbundling occurs. Further, TransCanada has sought authorization from the Canadian National Energy Board (NEB) to transfer its export authorization from Great Lakes to Northern Minnesota.

5/ See supra notes 1 and 3.

6/ 52 FR 27705, July 23, 1987.

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

8/ 49 FR 6684, February 22, 1984.

9/ 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.