

Cited as "1 ERA Para. 70,771"

Pacific Interstate Transmission Company (ERA Docket No. 87-32-NG), April 20, 1988.

DOE/ERA Opinion and Order No. 237

Order Granting Blanket Authorization to Import Natural Gas from Canada and Granting Interventions

I. Background

On June 26, 1987, Pacific Interstate Transmission Company (PIT) 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 authority to import from Canada total daily quantities of up to 640,000 Mcf of natural gas for a period of two years, beginning on the date when initial deliveries commence. PIT is an interstate pipeline created to secure natural gas for its distributor affiliate and only customer, Southern California Gas Company (SoCal).

PIT requests that approval be granted on a self-implementing basis, under a blanket import authorization. PIT proposes to purchase the lowest cost gas supplies available to it from its current suppliers, Pan-Alberta Gas Ltd. (Pan-Alberta) and Westcoast Transmission Company Limited (Westcoast), on a best-efforts, interruptible basis for resale to SoCal and ultimate consumption within California. PIT furnished copies of signed letters of intent with Pan-Alberta and Westcoast to enter into contracts for the purchase of up to 640,000 Mcf per day and 440,000 Mcf per day of natural gas, respectively, as a potential supply for its proposed import arrangement. PIT would receive the gas at points on the international boundary near Kingsgate and Huntingdon, British Columbia. Transportation and delivery of the gas to SoCal is expected to be performed for PIT on an interruptible basis by Pacific Gas Transmission Company, Northwest Pipeline Corporation, and El Paso Natural Gas Company under open access plans approved by the Federal Energy Regulatory Commission (FERC) using existing pipeline facilities. No new construction would be involved.

The application proposes an interruptible supply arrangement, involving no minimum purchase or minimum bill obligations. The price paid to its Canadian suppliers by PIT would be a "net-back" price, subject to monthly adjustment, that would reflect competing natural gas supplies available to SoCal, less PIT's tariff charges which include domestic transportation and fuel costs and a fee of 1 cent per MMBtu to cover administrative and general

expenses. PIT asserts that no demand or other fixed cost payment would be assessed at the international border or in subsequent resales.

Under the proposed service agreement between PIT and SoCal, sales would be arranged on a monthly basis. PIT would notify SoCal of the price of the Canadian gas available for sale and SoCal, in turn, would have sole discretion to nominate the volumes of gas it desires to purchase, up to a daily maximum of 640,000 Mcf. There would be no minimum purchase obligation. The service agreement also provides that, at SoCal's request, PIT would purchase and sell to SoCal competitively priced domestic gas.

PIT proposes to submit quarterly reports to the ERA showing the volumes imported, points of entry, transporters, and purchase and sales price.

Simultaneously with its application in this docket, PIT filed an application with the FERC, pursuant to Section 7(c) of the NGA, for certificate authority to sell this imported gas or gas purchased from domestic suppliers to SoCal under a new rate schedule IS-1 to its FERC gas tariff.^{1/} PIT is currently certificated to transport and sell natural gas to SoCal under four rate schedules. PIT does not intend to charge any costs associated with this arrangement to any other schedule, but does intend to credit revenues from the proposed IS-1 schedule which exceed costs against costs related to its existing CQS-1 rate schedule.^{2/}

In support of its application, PIT maintains that its proposed import arrangement complies with the DOE's policy guidelines on the regulation of imported natural gas^{3/} and is, therefore, consistent with the public interest requirements of Section 3 of the NGA. PIT states that the imports would provide a reliable and secure supplement to domestic gas production, and will further the DOE's policy of fostering the development of a viable North American spot market for natural gas.

II. Interventions and Comments

The ERA issued a notice of the application on August 18, 1987, inviting protests, motions to intervene, notices of intervention, and comments to be filed by September 23, 1987.^{4/} Fourteen timely motions to intervene and a notice of intervention were received.^{5/} Kern River Gas Transmission Company (Kern River) filed a late motion to intervene on September 30, 1987. Kern River states that its intervention was late because it only became aware of PIT's filing after the deadline for such motions. Kern River asserts that it is not requesting additional procedures or raising controverted issues and that its participation will not disrupt this proceeding or prejudice any

existing party. There was no opposition to any of the motions to intervene. With regard to Kern River's late filing, no delay to the proceeding or prejudice to other parties will result from Kern River being granted intervention. Accordingly, the filing is accepted and this order grants all motions to intervene.

Of the 16 intervenors, 13 took no position on the merits of the application and did not request additional procedures. Pan-Alberta and Westcoast support the issuance of the import authorization requested by PIT. BHP Gas Marketing Company (BHP) protests the application and requests a hearing. PIT filed an answer to the comments received from BHP.

BHP states that it is a producer and marketer of natural gas in competition with PIT and SoCal. In opposing the application, BHP asserts that PIT's FERC gas tariff favors PIT in its competition with other sellers to the California market. Specifically, BHP alleges that the as-billed passthrough of Canadian gas costs permitted under PIT's current rate schedule CQS-1 would subsidize imports of gas under the arrangement proposed here and further exacerbate "competitive inequities under [PIT's] existing rate schedules."

BHP asks that the ERA reject PIT's application or condition any approval upon PIT restructuring its gas tariff in accordance with the cost classification principles applied by the FERC to pipeline charges related to Canadian gas imports in Natural Gas Pipeline Company of America, Opinion Nos. 256 and 256-A.6/ This condition, BHP asserts, would afford equal rate design treatment for Canadian and domestic gas supplies. BHP states that under Section 3 of the NGA the ERA has broad authority to condition or modify import authorizations, including rate structures, in order to assure that domestic and Canadian supplies have an equal opportunity to compete for markets. Alternatively, BHP requests that the ERA initiate a hearing to determine whether the import authorization requested is in the public interest.

In its response to BHP's protest, PIT points out that the ERA evaluates import arrangements on the basis of their competitiveness in the markets served and in making such determinations has not evaluated the reasonableness of a resale rate schedule approved by the FERC. PIT asserts that BHP does not justify why the ERA should second-guess decisions of the FERC and reject the application or condition approval based on the proposed IS-1 schedule pending approval at the FERC and the currently effective CQS-1 schedule which the FERC found to be just and reasonable.

III. Decision

PIT's application has been reviewed to determine if it conforms with Section 3 of the NGA. Under Section 3, an import must be authorized unless there is 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 the import arrangement in the markets served is the primary consideration for meeting the public interest test.

BHP's opposition to PIT's proposal involves the appropriate design of a new rate schedule now pending before the FERC and a FERC-approved rate schedule. BHP asserts that PIT's tariff favors Canadian gas, impeding BHP's ability to compete, and must be restructured to ensure that Canadian and domestic supplies have an equal opportunity to compete.

In assessing the competitiveness of a freely negotiated international arrangement, the ERA focuses on whether the arrangement is sufficiently flexible to assure marketability of the gas over the term of the agreement. BHP does not demonstrate that this arrangement lacks flexibility or would discourage market-responsive gas pricing. Under this short-term arrangement, the volumes would be imported on a best-efforts, interruptible basis. The net-back price that PIT proposes to pay Pan-Alberta and Westcoast would be established monthly by reference to the price of other gas available in SoCal's market area. No minimum purchase provision is included in the proposal. PIT would be committed to purchase only those gas volumes nominated by SoCal, and SoCal's decision would be based on the competitiveness of Canadian imports with alternative gas supplies. PIT's import arrangement, as proposed, assures the competitiveness of any gas purchased by SoCal and promises to benefit ultimate consumers with a supplemental and reliable supply of reasonably priced gas. It thus comports with the DOE's policy guidelines.

A decision by the ERA that this import is not inconsistent with the public interest does not preclude the FERC, under Sections 4 and 5 of the NGA, from considering the justness and reasonableness of the specific methodology of cost to be employed by the shippers when passing through the charges of their gas suppliers to their customers. When the FERC accepted and allowed the method of cost allocation and rate design contained in PIT's existing CQS-1 schedule it found those rates to be just and reasonable. The proposed rate schedule IS-1 is subject to a comparable examination. BHP has not persuaded the ERA that it should reexamine decisions made by the FERC consistent with that agency's ratemaking authority, and the condition BHP requests is therefore denied.

In the alternative, BHP requests a hearing to determine whether the

import of additional gas is in the public interest. We are assuming that BHP intended to request a trial-type hearing under Section 509.313 of the ERA's administrative procedures. That section requires any party filing a motion for a trial-type hearing to demonstrate that there are factual issues genuinely in dispute, relevant and material to the decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. BHP is not entitled as a matter of right to a trial-type hearing on the policy and legal issues that it has raised concerning FERC rate design decisions and matters of agency jurisdiction. The ERA does not believe BHP has demonstrated that further illumination of the issues would be aided materially by a trial-type hearing nor that such a hearing is necessary to assure the adequacy of the record or the fairness of this proceeding. Accordingly, the ERA has determined that it would not be in the public interest to hold a trial-type hearing, and BHP's request is therefore denied.

After taking into consideration all the information in the record of this proceeding, I find the authorization requested by PIT is not inconsistent with the public interest and should be granted.^{9/}

ORDER

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

A. Pacific Interstate Transmission Company (PIT) is authorized to import up to 640,000 Mcf per day of Canadian natural gas for a two-year period beginning on the date of first delivery for resale to Southern California Gas Company (SoCal) in accordance with the application and the agreements submitted as part of the application in this docket.

B. This natural gas may be imported through existing pipeline facilities located at Kingsgate and Huntingdon, British Columbia.

C. PIT shall notify the Economic Regulatory Administration (ERA) in writing of the date of the first delivery of gas authorized in Ordering Paragraph A within two weeks after deliveries begin.

D. With respect to the imports authorized by this Order, PIT shall file with the ERA within 30 days following each calendar quarter, quarterly reports indicating whether purchases of imported gas have been made, and if so, giving, by month, the total volume of the imports in MMcf, the name of the seller(s), and the average purchase price per MMBtu at the international border. The reports shall also provide the sales price to SoCal per MMBtu,

transporter(s), and points of entry.

E. The requests by BHP Gas Marketing Company for a trial-type hearing and imposition of a condition for the approval of this import that would require PIT to restructure its Federal Energy Regulatory Commission gas tariff are denied.

F. 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 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 April 20, 1988.

--Footnotes--

1/ FERC Docket No. CP87-411-000 (52 FR 27243, July 20, 1987). The rate to be paid by SoCal would consist of a one-part volumetric rate which would provide for commodity gas costs, transportation and fuel cost, and 1 cent per MMBtu to cover administrative and general expenses.

2/ Under its rate schedule CQS-1, PIT sells to SoCal Canadian gas purchased as part of the "prebuild" project of the Alaskan Natural Gas Transportation System. PIT purchases the gas from Northwest Alaskan Pipeline Company, the importer, who in turn purchases the gas from Pan-Alberta Gas Ltd., the Canadian exporter.

3/ 49 FR 6684, February 22, 1984.

4/ 52 FR 31806, August 24, 1987.

5/ They were filed by Southwest Gas Corporation, Mojave Pipeline Company, Foothills Pipe Lines (Yukon) Ltd., Dome Petroleum Limited, El Paso Natural Gas Company, Northwest Pipeline Corporation, Pacific Gas and Electric Company, Pacific Gas Transmission Company, Transwestern Pipeline Company, Southern California Gas Company, Northwest Alaskan Pipeline Company, BHP Gas Marketing Company, Pan-Alberta Gas Ltd., Westcoast Transmission Company Limited, and the Public Utilities Commission of the State of California.

6/ Opinion Nos. 256 and 256-A involved the as-billed passthrough by Natural Gas Pipeline Company of America of the two-part demand/commodity rate

in its renegotiated contracts with its Canadian gas suppliers, 37 FERC 61,215 (1986), rehearing granted in part and denied in part, 39 FERC 61,218 (1987).

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

8/ See supra note 3.

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.