

Cited as "1 ERA Para. 70,789"

Tennessee Gas Pipeline Company (ERA Docket No. 87-53-NG), July 15, 1988

DOE/ERA Opinion and Order No. 254

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

I. Background

On September 29, 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 authority to import up to 25,000 Mcf per day of Canadian natural gas from November 1, 1987, until October 31, 2002. The application includes a Precedent Agreement dated May 18, 1987, (1987 precedent agreement) and a proposed Gas Purchase Contract (the 1987 Gas Purchase contract) between TransCanada Pipeline Limited (TransCanada) and Tennessee. All of these documents are herein after referred to as "the application". The natural gas would be sold to Tennessee by TransCanada, and would be delivered to Tennessee through an existing interconnection with TransCanada located near Niagara Falls, New York. New facilities will be required to allow Tennessee to receive the maximum daily volumes requested.

Tennessee, a division of Tenneco Inc., is a Delaware corporation engaged in the business of producing, purchasing, transporting and selling natural gas. In its application Tennessee states that it would purchase natural gas from TransCanada according to the following purchase schedule:

Period	Daily contract quantity in Mcf
November 1, 1987, to Oct. 31, 1988 ...	5,000
November 1, 1988, to Oct. 31, 1989 ...	10,100
November 1, 1989, to Oct. 31, 1990 ...	20,300
November 1, 1990, to Oct. 31, 2002 ...	25,000

The daily contract quantity may be adjusted by the parties but cannot exceed 25,000 Mcf per day.

Tennessee states that no new facilities would be needed to receive the contract quantity of up to 10,100 Mcf per day,^{1/} although new facilities would need to be constructed to receive the additional increments proposed. Tennessee has an application pending at the Federal Energy Regulatory Commission (FERC) for authorization to construct and operate additional facilities on Tennessee's Niagara spur which will allow Tennessee to receive the anticipated maximum daily contract quantity of 25,000 Mcf. ^{2/}

The application provides that Tennessee will, on a monthly basis, take or pay for 20 percent of the Minimum Monthly Quantity, the maximum quantity of gas which TransCanada is obligated to deliver to Tennessee each day, times the number of days each month. If Tennessee is unable to take at least the minimum monthly quantity of gas in any month, Tennessee must pay TransCanada for such portions of the minimum that it does not purchase in such month. The sum of the payments so made are referred to as Tennessee's prepaid gas account. Tennessee can recover money paid for gas not taken by purchasing in any month, volumes of gas in excess of the minimum monthly quantity as designated by Tennessee to be make-up gas. For any month in which Tennessee receives such gas, an amount calculated according to a specified formula shall be deducted from Tennessee's prepaid gas account. At the end of the contract, if there remains any amount in Tennessee's account, TransCanada will refund to Tennessee 90 percent of such amount.

For natural gas service Tennessee shall pay TransCanada an amount based on the sum of the following tolls: (1) The monthly demand toll, as determined by Canada's National Energy Board (NEB) (2) The average monthly demand toll, as billed to Tennessee by NOVA (NOVA) and Alberta corporation, for the transportation of the gas on NOVA's system.

The base commodity rate for the minimum monthly quantity will be determined by Tennessee's weighted average cost of gas (WACOG) per MMBtu purchased from producers in the field as reflected in its Purchased Gas Adjustment (PGA) filing with the FERC on the first day of the month in which gas is delivered. Tennessee's WACOG as of January 1, 1988, was 1.9642 per MMBtus.

Tennessee maintains that the pricing provisions of its application provide assurance that gas it purchases will be marketable at the time of first delivery and throughout the term of the contract. Tennessee will not purchase any gas unless it is available at a price which allows it to be resold to Tennessee's customers. By relating the price of gas to be purchased from Canada to the price of gas available from U.S. sources, Tennessee maintains that the opportunity to purchase gas on a monthly least cost basis

is increased. Purchases on a least cost basis insure both the continued ability of the Canadian supplies to remain competitive and the continued ability of Tennessee to resell this gas during the term of the contract.

Tennessee further maintains that the agreement between it and TransCanada is in the public interest and conforms to the DOE policy guidelines for natural gas imports.^{3/}

Tennessee had requested that the ERA expeditiously issue this notice and shorten the comment period. Tennessee stated that all the intervenors in the previous ERA docket, not withdrawn, in which Tennessee requested import authorization for natural gas to be purchased from TransCanada had been served with copies of the new application.

Tennessee did not identify any emergency circumstances that would have justified deviating from normal practice and shortening the comment period. The contractual relationship between Tennessee and TransCanada is complex and interested parties were entitled ample time to analyze and respond to the application. Further it could not be assumed that only intervenors in the previous Tennessee/TransCanada docket would, as Tennessee suggests, have a legitimate interest in the present application. Tennessee's request for a shortened comment period was therefore denied.

II. Procedural History

DOE/ERA Opinion and Order No. 44 4/ (Order 44) conditionally authorized Tennessee to import up to 300,000 Mcf per day of natural gas and a total of 1,095.8 Bcf from TransCanada over a period of ten years at a border price of \$4.94 (U.S.) per MMBtu. That import was conditioned upon the DOE's review and adoption of any environmental analysis of Tennessee's proposed construction and operation of the additional facilities needed to transport the imported gas from Niagara Falls.

On September 17, 1985, Tennessee filed an application with the ERA in Docket 81-24-NG to amend its conditional authorization to reflect a new precedent agreement executed on April 19, 1985, with TransCanada. That application was contested and the ERA issued a procedural order on March 13, 1986, requesting Tennessee to respond to specific questions related to that application, and soliciting written comments from all parties on Tennessee's response. Subsequently, in reply to a motion by Tennessee, the ERA granted an indefinite extension of time to provide the information.

On July 17, 1987, Tennessee filed with the ERA a report of contract

amendments under 10 CFR Section 590.407 of the ERA's procedural rules, containing a precedent agreement dated May 18, 1987, and gas purchase contract with reflected amendment to the two TransCanada precedent agreements and gas purchase contracts considered by the ERA in issuing Order 44.

By letter dated September 23, 1987, the ERA advised Tennessee that it did not accept Tennessee's filing of July 17, 1987, as a notice of contract amendment and stated that Tennessee should either (1) file an application to amend authorization approved in Order No. 44 or (2) file an application for a separate new authorization to import gas based on the May 18, 1987, precedent agreement. The ERA suggested that should Tennessee elect to file a separate new authorization, Tennessee should withdraw its pending 1985 application in ERA Docket No. 81-24-NG to amend Order 44.

On October 2, 1987, the ERA received notice of Tennessee's withdrawal of its previous application filed in ERA Docket No. 81-24-NG, together with a certification that it had served all parties to that docket with a notice of the withdrawal. The withdrawal was effective on November 2, 1987. The ERA issued a notice of the new application on December 3, 1987.^{5/}

On June 21, 1988, the ERA received a supplement to the application which requested that the 5,000 Mcf per day through existing facilities, originally requested be increased to 10,100 Mcf per day through existing facilities. Tennessee states that this is possible since in connection with its Interim Natural Gas Service (INGS) project, Tennessee installed a 3,500 horsepower (hp) compressor and a 1,000 hp compressor to move gas into Tennessee's main system in connection with the INGS project. These existing compressors will provide capacity to receive and deliver the 5,000 Mcf per day initially sought and the increase to 10,100 Mcf per day originally requested to begin on November 1, 1988, as stated in Tennessee's original application. The new total quantity through existing facilities would be 10,100 Mcf per day. Additional new facilities will be needed to transport the additional 14,900 Mcf per day.

Motions to intervene in this docket without comments or requests for additional procedures were received from Tennessee Small General Service Customer Group (SGS Group), Alberta Northeast Gas, Limited (ANE), New England Fuel Institute (NEFI), Northern Indiana Public Service Company (NIPSCO), Columbia Gas Transmission Corporation (Columbia), Orange and Rockland Utilities, Inc. (Orange and Rockland), Long Island Lighting Company (LILCO), The New England Customer Group (New England),^{6/} Niagara Mohawk Power Corporation (Niagara Mohawk), Public Service Electric and Gas Company (Public Service), Western Gas Marketing Limited (WGML), and Transcontinental Gas Pipe Line Corporation (Transco). LILCO and WGML provided brief general statements

in support of Tennessee's proposal. No responses in opposition to this application were received.

III. Decision

Tennessee'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 has been a finding that the import "will not be consistent with the public interest." 7/ The ERA Administrator is guided by the DOE's natural gas import policy guidelines. 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 agreement 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 agreement. Only 20 percent of the minimum monthly quantity will be subject to a take-or-pay obligation and the arrangement provides Tennessee with the opportunity to recover all of the money paid for gas not taken and is guaranteed recovery of at least 90 percent. The pricing provisions, the periodic review provisions, and the progressive annual takes built into this new arrangement support a conclusion that the proposed import will be market responsive and competitively priced. Further, no party argued that the arrangement would not be competitive. 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/TransCanada import arrangement will provide Tennessee with imported gas that will be competitive in Tennessee's market areas over the term of the arrangement. Tennessee proposes to use this gas for resale to its customers and no party had 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 TransCanada, 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 TG85-1 authorizing removal of the gas from Alberta, and by the NEB through issuance of its License GL-84 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 of supply security. 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.

The National Environmental Policy Act of 1969 (NEPA) 8/ requires federal agencies to give appropriate consideration to the environmental effect of their proposed actions. For Tennessee's proposed project, the issuance of several major permits and authorizations are required before the project can proceed, including the ERA's authorization under Section 3 of the NGA to import gas from Canada and FERC's authorization under Section 7 of the NGA for Tennessee to upgrade and extend its existing pipeline facilities. The FERC has the lead in preparing an Environmental Impact Statement (EIS) assessing the impacts of constructing Tennessee's additional transmission facilities.^{9/} The DOE is a cooperating agency ^{10/} and assisted in the review of the draft EIS.

Tennessee states that existing facilities will be used to receive and transport the initial 10,100 Mcf per day. The approval of this import of natural gas in excess of 10,100 Mcf per day is therefore being conditioned on completion of the environmental review of the new facilities.^{11/} When the EIS is completed by the FERC, the DOE will issue a Record of Decision.^{12/} The ERA will then reconsider this conditional order and issue a final opinion and order. This conditional order indicates to the parties the ERA's determination at this time on all but the environmental issue in this proceeding. All parties are advised that the issues addressed herein regarding the import of natural gas in excess of 10,100 Mcf per day will be reexamined at the time of the DOE's review of the FERC NEPA analysis. The results of that reexamination will be reflected in the final opinion and order.

After taking into consideration all of the information in the record of this proceeding and the absence of opposition to Tennessee's proposal, and subject to the conditions set forth below, I find that granting Tennessee authorization to import natural gas in accordance with the provisions of its application with TransCanada is not inconsistent with the public interest.

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 agreement with TransCanada Pipelines, Limited (TransCanada) in the quantities and for the term as set forth in the following schedule; subject to the conditions set forth in Paragraphs B & C:

Period	Daily Contract Quantity in Mcf
November 1, 1987 to October 31, 1988	5,000
November 1, 1988 to October 31, 1989	10,100
November 1, 1989 to October 31, 1990	20,300
November 1, 1990 to October 31, 2002	25,000

B. Except for daily volumes of 10,100 Mcf, the importation of the volumes authorized in Ordering Paragraph A is conditioned upon entry of a final opinion and order by the Economic Regulatory Administration (ERA) and after review by the Department of Energy (DOE) of the final Environmental Impact Statement on Tennessee Gas Pipeline Company's natural gas pipeline facilities currently being prepared by the Federal Energy Regulatory Commission, and the completion by the DOE of its responsibilities under the National Environmental Policy Act.

C. Tennessee 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 deliveries begin.

D. With respect to the imports authorized by this Order, 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 paid for those volumes at the international border. The price information shall include a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis.

E. 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.

F. 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 any opinion and order issued in such subsequent proceedings.

Issued in Washington, D.C. on July 15, 1988.

--Footnotes--

1/ On June 21, 1988, Tennessee filed a supplement to its application showing how it can use existing facilities to move not only the 5,000 Mcf per day requested in its original application but up to 10,100 Mcf per day by November 1, 1988.

2/ See Tennessee's application for Certificate of Public Convenience and Necessity, Docket No. CP87-131-000 and the Amendment to that application, Docket No. CP87-131-001 (Niagara Spur Expansion).

3/ 49 FR 6684, February 22, 1984.

4/ See Tennessee Gas Pipeline Company, ERA Docket No. 81-24-NG, 1 ERA Para. 70,549 (May 19, 1982).

5/ 52 FR 46822, December 10, 1984.

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 Light and Power Company

Connecticut Natural Gas Corporation

EnergyNorth, Inc.

Essex County Gas Company

Fitchburg Gas and Electric Light Company

Granite State Gas Transmission, Inc.

City of Holyoke, Massachusetts Gas and Electric Department

The Southern Connecticut Gas Company

Valley Gas Company

City of Westfield Gas and Electric Light Department

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

8/ 42 U.S.C. 4321, et seq.

9/ Ocean State Power Project, Final Environmental Impact Statement, Volumes I and II, Ocean State Power, Tennessee Gas Pipeline Company, Federal Energy Regulatory Commission, Office of Pipeline and Producer Regulation (FERC/EIS-0050, July 1988). Part of the gas supply for Ocean State will be provided by Tennessee through the same facilities Tennessee proposes to use for this import. The Federal Energy Regulatory Commission considered both the Ocean State project and the Tennessee construction in this EIS.

10/ 40 CFR Sec. 1501.6.

11/ Because the proposed importation of 10,100 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.

12/ 40 CFR Sec. 1505.2.