

Cited as "1 ERA Para. 70,826"

Consumers Power Company (ERA Docket No. 88-38-NG), December 7, 1988.

DOE/ERA Opinion and Order No. 284

Order Granting a Long-Term Authorization to Import Natural Gas from Canada and Granting Interventions

I. Background

On July 1, 1988, Consumers Power Company (Consumers Power) 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 up to 59,000 Mcf per day of firm Canadian natural gas supplies over a 15-year period, beginning on the date of the first delivery. The applicant, a corporation registered in the State of Michigan and an operating subsidiary of CMS Energy Corporation, has its principal place of business in Jackson, Michigan.

As a combined natural gas and electric utility, Consumers Power plans to import Canadian natural gas to supplement its system supply and ensure the reliability of its service to retail gas customers in Michigan's lower peninsula. The gas would be imported on a firm basis from Norcen Energy Resources Limited (Norcen), Shell Canada (Shell), Canterra Energy Ltd. (Canterra), and TransCanada PipeLines Limited (TransCanada) for a term of 15 years commencing on the first delivery. Based on an August 25, 1988, amendment to its application, Consumers Power estimates that the delivered weighted average cost of the gas (WACOG) at 100 percent load factor would be approximately \$2.16 (U.S.) per Mcf. Consumers Power would pay the four Canadian sellers contract prices that consist of a demand and commodity charge that are similar to other Canadian import arrangements approved by the ERA using two-part rate structures. The demand charge component of \$.30 to \$.33 per MMBtu and \$.1049 per MMBtu for fuel compression would recover the costs of pipeline transportation in Canada. The commodity based charges of \$1.66 to \$1.76 per MMBtu would be net-back prices indexed to track on a monthly basis Consumers Power's WACOG of interstate pipeline suppliers.

Consumers Power states that the individual contracts (except for Norcen) provide for maximum daily quantities (MDQ) of up to 15,000 Mcf of firm gas deliveries. MDQ volumes for Norcen would initially be for 10,000 Mcf per day until October 31, 1989, when daily quantities would increase to a maximum of 14,000 Mcf per day thereafter before terminating on November 1, 2001. Each

sale contract contains a minimum annual purchase requirement equal to 75 percent of the MDQ volumes.

Provisions in each contract require Consumers Power to make deficiency payments based on differing formulas to compensate suppliers for the difference between the minimum annual quantity and the actual quantity of gas taken if less than the minimum annual quantity. Under the Norcen agreement, Consumers Power would pay the seller a deficiency payment equal to the product of the minimum take deficiency (MTD), the weighted average heating value of the gas per Mcf during the relevant contract year, and the weighted average commodity charge applicable in the final month of the contract year in which the MTD was incurred. Gas taken in a given contract year above minimum annual volumes would constitute excess deliveries that would be applied over a five-year period as a "make up" against any unrecovered deficiency of payment. The Shell, Canterra and TransCanada agreements generally determine the amount of any deficiency payment on the basis of the MTD times 15 percent of the commodity price during the last month of the relevant contract year. Consumers Power's contracts with Shell and TransCanada permit deficiencies to be made up during the contract year immediately following the year in which an MTD is incurred. The Canterra contract, which does not contain a make-up provision, would calculate the MTD prior to January 1, 1992, on the basis of two consecutive contract years, reverting to one contract year commencing January 1, 1992. The Canterra contract also provides for certain adjustments to deficiency payments to reflect, for example, underdeliveries by the seller and quantities in excess of the minimum annual quantity that are transported by Consumers Power to alternate markets.

According to Consumers Power, the Canadian suppliers would deliver the gas to a point on the international border near Emerson, Manitoba, where the pipeline facilities of TransCanada interconnect with those of Great Lakes Gas Transmission Corporation (Great Lakes). Transportation of the gas in Canada would occur on the systems of NOVA Corporation of Alberta, TransCanada and Northwestern Utilities Limited (Northwestern). The imported volumes would be transported from the international border by Great Lakes, ANR Pipeline Company (ANR), Panhandle Eastern Pipe Line and Trunkline Gas Company to negotiated points on either Consumers Power's own system or that of Michigan Gas Storage Company.

In support of its application, Consumers Power states that the import proposal is in the public interest because its contracts with Canadian suppliers contain provisions that will ensure a market-responsive supply of gas. Further, the applicant asserts that firm Canadian gas supplies are needed to diversify from existing supply sources and help reduce its overall

historical dependence on regional gas suppliers for meeting its system demand. The applicant also notes that the proximity of its system to Canada and the proven reliability of its Canadian suppliers assure Consumers Power's customers a long-term security of supply. Further, since Consumers Power plans to utilize existing facilities, it contends that there will be no adverse environmental problems.

Finally, in addition to the long-term import authority sought by Consumers Power, it requests "authority to assign its contract and import authorization rights to third party purchasers within the United States in those limited factual circumstances in which Consumers Power is unable to receive or use for system supply its full firm contractual commitments under the indicated contracts."

II. Intervention and Comments

The ERA issued a notice of this application on August 31, 1988, inviting protests, motions to intervene, notices of intervention, and comments to be filed by October 11, 1988.^{1/} Motions to intervene without substantive comment or requests for additional procedures were filed by ANR Pipeline Company (ANR), Michigan Consolidated Gas Company (MichCon), and TransCanada. TransCanada filed for leave to intervene one day late. No delay in this proceeding or prejudice to any party will result from TransCanada's late intervention. Therefore, the late filing is accepted and this order grants intervention to all movants.

III. Decision

Under Section 3 of the Natural Gas Act, an application to import natural gas must be approved unless, after opportunity for hearing, it is found that the import "will not be consistent with the public interest."^{2/} The ERA is guided in making its determination by the DOE's natural gas import policy guidelines.^{3/} Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test. In the case of long-term arrangements such as this, need for the gas supply and security of supply are also important considerations.

The ERA has determined that Consumers Power's uncontested import proposal, as set forth in the application, is consistent with the DOE policy guidelines. The provisions of each gas purchase contract contain a market-responsive pricing mechanism that indexes the net-back commodity price of the imported gas to track on a monthly basis Consumers Power's WACOG for interstate pipeline supplies. In addition, other contract provisions allow

Consumers Power to make up deficiencies in annual quantities over a reasonable period of time and to reduce the MDQ in certain limited instances where suppliers fail to deliver requested volumes. Thus, the ERA finds that the arrangement is market-responsive and that it will remain both flexible and competitive over the term of Consumers Power's import authorization.

Consumers Power has demonstrated a need for the gas. Under the ERA's policy guidelines, need is viewed as a function of competitiveness. When imported gas is shown to be competitive in the proposed market, which is the case here, the arrangement is given a rebuttable presumption of need. Consumers Power maintains that it has negotiated the four long-term Canadian supply contracts as an integral part of its program of supply diversification (which also includes the purchase of additional domestic gas supplies). The ERA finds that such supply diversification is consistent with U.S. energy policy, and is necessary if Consumers Power is to take optimal advantage of the range of prices and supplies offered in the North American gas market. Competitively priced Canadian gas should enhance the overall marketability of Consumers Power's system supply to the ultimate benefit of purchasers on the system. No party has challenged the need for this long-term import proposal.

With respect to the security of Consumers Power's long-term Canadian gas supply, the ERA notes that under the DOE policy guidelines, security of supply may be demonstrated by the historical reliability of the supplier.^{4/} Canada has long been a secure source of supply, and in this case, TransCanada, NOVA, Northwestern, ANR and Great Lakes have fully demonstrated their long-term reliability as transporters. Once more, no party has disputed the reliability of Consumers Power's transporters or the security of its Canadian suppliers.

Finally, Consumers Power's request for assignment is denied. The assignment authority, if granted, would redelegate to Consumers Power, a private party, the ERA's responsibility to regulate this natural gas import. In addition, this matter is addressed procedurally in Section 590.405 of the ERA's administrative rules which prohibits the transfer or assignment of import or export authority unless specifically authorized by the Administrator.^{5/} The identity of the importer is a fundamental part of the factual basis supporting the ERA's public interest determination. Furthermore, the public interest would not be served by permitting the future assignment of import authority to unidentified third parties who are not accountable for compliance with the terms and conditions of authorization when granted, including, for example, reporting requirements which enable ERA to monitor both specific compliance and the international gas trade generally. This denial does not preclude Consumers Power from requesting a short-term blanket authorization to import part of its annual contract quantities for sale to

third party purchasers or from requesting transfer or assignment of the import authorization at a later time to a specifically identified third party purchaser.

IV. Conclusion

After taking into consideration all of the information in the record of this proceeding, and the fact that no party opposed this long-term import application, I find that granting Consumers Power authority to import up to 59,000 Mcf of Canadian natural gas per day from four Canadian suppliers over a 15-year term beginning on the date of first delivery is not inconsistent with the public interest and should be approved.^{6/}

ORDER

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

A. Consumers Power Company (Consumers Power) is authorized to import at the international border near Emerson, Manitoba, up to an aggregate of 59,000 Mcf per day of Canadian natural gas from Norcen Energy Resources Limited, Shell Canada Limited, Canterra Energy Ltd., and TransCanada Pipelines Limited for a 15-year period beginning the date of first delivery, in accordance with the representations made in its application and with the pricing and other provisions contained in the four gas purchase contracts submitted as part of its application.

B. Consumers Power shall notify the ERA in writing of the date of first delivery of natural gas imported under Ordering Paragraph A within two weeks after deliveries begin.

C. Consumers Power's request to assign its import authority rights to third parties within the United States is denied.

D. With respect to the imports authorized by this Order, Consumers Power shall file with the ERA within 30 days following each calendar quarter, quarterly reports showing by month the total volume of natural gas imports from each of its four suppliers in MMcf and the average price per MMBtu from each at the international border. The monthly pricing information shall include a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis for each supplier.

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 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 December 7, 1988.

--Footnotes--

1/ 53 FR 34810, September 8, 1988.

2/ 15 U.S.C. Sec. 717b.

3/ 49 FR 6684, February 22, 1984.

4/ See supra note 3, at 6687.

5/ 49 FR 35302, September 6, 1984.

6/ 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. Be advised that in cases not involving new construction the DOE has issued a proposed categorical exemption to NEPA (See 53 FR 29934, August 9, 1988).