

Cited as "1 FE Para. 70,261"

Tennessee Gas Pipeline Company (ERA Docket No. 87-28-NG), October 31, 1989.

DOE/FE Opinion and Order No. 195-B

Final Opinion and Order Granting Authorization to Import Natural Gas from Canada

I. Background

On October 9, 1987, the Economic Regulatory Administration (ERA) 1/ of the Department of Energy (DOE) issued DOE/ERA Opinion and Order 195 (Order 195) 2/ authorizing Tennessee Gas Pipeline Company (Tennessee) to import from Canada up to 5,000 Mcf of natural gas per day during the period November 1, 1987, through October 31, 1988. Order 195 conditionally authorized Tennessee to import up to 29,900 Mcf of Canadian gas per day during the period November 1, 1988, through October 31, 1989, up to 79,700 Mcf of Canadian gas per day during the period November 1, 1989, through October 31, 1990, and up to 125,000 Mcf per day thereafter through October 31, 2002. The gas would be purchased from KannGaz Producers Ltd. (KannGaz) for Tennessee's system supply and would be delivered to Tennessee through an existing interconnection with TransCanada PipeLines Limited (TransCanada) near Niagara Falls, New York. The first year import volumes could be imported by Tennessee through existing pipeline facilities. The ERA conditioned authorization for imports above 5,000 Mcf per day on the issuance of a final ERA opinion and order after review by the DOE of the Federal Energy Regulatory Commission's (FERC) environmental analysis and completion of the DOE's National Environmental Policy Act of 1969 (NEPA) 3/ responsibilities in connection with the new facilities required for the transportation of the additional authorized volumes.

FERC's environmental analysis responsibilities necessitated the preparation of a Final Environmental Impact Statement (FEIS) by FERC which assessed the impacts of the additional facilities proposed by Tennessee to increase the pressure on its Niagara Spur pipeline and northern No. 200 mainline to enable receipt of the remaining import volumes from KannGaz and move them from the Niagara Spur through its mainline.^{4/} The FEIS was issued July 8, 1988.^{5/}

On July 15, 1988, at the request of Tennessee, the ERA issued DOE/ERA Opinion and Order No. 195-A 6/ removing the condition imposed on the importation of 29,900 Mcf per day during the period November 1, 1988, to

October 31, 1989. That action was based on Tennessee's showing that two existing compressors required to transport the additional imports that had been operated under temporary authority at its station 233 and 230-B compressor installations were authorized for permanent operation by the FERC on June 30, 1988.^{7/} The authority to operate those existing compressors on a permanent basis provided Tennessee with sufficient capacity to move the additional 29,900 Mcf per day of authorized import into its system on November 1, 1988.

On February 23, 1989, Tennessee filed a request that Order 195 again be modified to remove the NEPA related conditions stated in Ordering Paragraphs B and D thereof.^{8/} In support of its request, Tennessee asserts that all the environmental information necessary to remove the conditions is included in the aforementioned FERC FEIS for the Ocean State Power Project. Tennessee notes that the FERC issued an order on October 3, 1988, granting a certificate of public convenience and necessity authorizing Tennessee to construct and operate facilities on its Niagara Spur and on its mainline in order to transport the volumes of natural gas to be purchased under the KannGaz contract.^{9/} A FERC order on rehearing issued November 29, 1988, slightly modified the initial order but did not affect the proposed construction of the new facilities.^{10/} In issuing its certification of the construction and operation of the new facilities, the FERC relied on the July 8, 1988, FEIS in assessing the environmental impacts of the proposed construction. Tennessee states that it proposes, beginning on November 1, 1989, to use the facilities on its Niagara Spur identified in the FEIS and permitted by FERC's certificate of public convenience and necessity to transport the additional imported volumes into its system. Accordingly, Tennessee submits that the FERC's FEIS contains all the information required for a determination to remove the NEPA condition imposed on the remaining increments of its import authority.

II. Decision

Under section 3 of the Natural Gas Act (NGA) 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 interests." ^{11/} The Office of Fossil Energy (FE) is guided in making its determination by the DOE's natural gas import policy guidelines.^{12/} Under this policy, 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. In addition, NEPA requires FE to consider the environmental effects of natural gas import authorizations.

A. Environmental Considerations

The FERC was the lead Federal agency in conducting an examination of the environmental effects of constructing Tennessee's additional Niagara Spur pipeline facilities and preparing the FEIS. The FERC has the responsibility under section 7 of the NGA to certificate the pipeline facilities supplying the gas. The DOE participated as a cooperating agency during the preparation of the FEIS. After the FEIS was issued by the FERC it was adopted by the DOE.^{13/} FE relied on the FEIS in assessing the environmental effects of granting or denying Tennessee's import.

If FE denied this application for importing gas to the Northeast U.S., Tennessee would need to look elsewhere for an alternative supply of gas to meet the expected future requirements of its customers in the region. Tennessee may be required to construct additional pipeline facilities in other locations to transport gas supplies from other sources. However, regardless of whether Tennessee's increased imports are approved, the facility additions proposed on the Niagara Spur in New York would still take place because they already have been approved in connection with a Canadian gas import arrangement that will supply the Ocean State electric generating facilities that will be built in Rhode Island.^{14/} Although Ocean State's project and Tennessee's application in this docket are independent import projects, the two proposals are dependent on the expansion by Tennessee of its Niagara Spur. The FERC, on October 3, 1988, granted a certificate of public convenience and necessity authorizing Tennessee to construct and operate facilities on its Niagara Spur and on its No. 200 mainline in order to transport Canadian gas to the Ocean State plant and to take delivery of gas for system supply.^{15/} The environmental impacts associated with Tennessee's proposed imports and Ocean State's approved imports would be no different because they are tied to the same Niagara Spur expansion.^{16/}

Since both projects involve common facilities, the FEIS addressed the environmental impacts of the transmission facilities proposed by Tennessee, as well as the new power plant and ancillary facilities proposed by Ocean State. The FEIS discussed and evaluated the following proposals by Tennessee for facilities to expand throughput on its Niagara Spur pipeline and No. 200 mainline system to enable it to accommodate the scheduled buildup of contract volumes authorized to be imported from KannGaz: (1) expand measurement and odorization facilities at the Lewiston Meter Station at the Niagara River in Niagara County, New York; (2) convert from temporary to permanent operation the idle 3,500-horsepower (hp) compressor at Station 233 on Tennessee's mainline in Livingston County, New York, previously approved by the FERC for interim service; (3) convert from temporary to permanent operation the idle

1,000-hp compressor at Station 230B on Tennessee's mainline in East Aurora, New York, at the interconnection of the Niagara Spur and the mainline and add 1,200 hp of compression at Station 230B; and (4) construct a new 4,500-hp compressor station at Lockport, in Niagara County, New York.

The FEIS concluded that no significant impacts would occur as a result of the proposed compressor station additions and construction of the new compressor station. It was recommended, however, that the proposed compressor additions be designed such that operational compressor noise shall not exceed Ldn of 55 dBA at any existing noise-sensitive areas nearby (such as hospitals and residences). We note that the certificate granted by the FERC for the Ocean State project,^{17/} was conditioned on the requirement that Tennessee submit to the FERC post-construction sound level surveys to verify that these performance goals have been achieved.^{18/} Tennessee has agreed to the noise emission limitations.

B. Order 195 and Order 195-A

Orders 195 and 195-A operate as final opinions and orders for requested import volumes up to 29,900 Mcf per day. Issues addressed in these orders as they pertain to the import of gas in excess of 29,900 Mcf per day are being reexamined herein in light of our review of the FEIS.

In Order 195, the ERA made determinations that were final insofar as they authorized volumes up to 5,000 Mcf per day but preliminary with respect to volumes in excess of 5,000 Mcf per day. The ERA found that the import arrangement, including the conditioned volumes, conforms to the DOE policy guidelines and that it will be competitive throughout the term of the authorization. Tennessee's agreement with KannGaz provides that only 20 percent of the minimum monthly quantity will be subject to a take-or-pay obligation. Other contract provisions allow Tennessee opportunities to recover its take-or-pay costs. Moreover, the pricing provisions, periodic review provisions, and progressive annual takes built into the agreement all indicate that the proposed import will be market responsive and competitively priced. Under the policy guidelines, need is presumed to be a function of competitiveness. Based on the marketability of gas under this arrangement, the ERA therefore determined that there is a need for the proposed import. With respect to security of supply, the ERA found that 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 term of the import proposal. Therefore, the ERA found that the proposed import would be consistent with the public interest.

In Order 195-A, the ERA reaffirmed and made final the preliminary findings with respect to volumes up to 29,900 Mcf per day.

C. Conclusion

As noted above, Tennessee was authorized in Orders 195 and 195-A to import up to 29,900 Mcf of Canadian gas per day. The approval of volumes higher than 29,900 Mcf per day, however, was conditioned upon the entry of a final opinion and order after review of the environmental analysis of the new facilities necessary to transport these volumes. After examining the entire record of this proceeding, including the FEIS prepared by the FERC, I find that there is no information that would provide a basis for us to alter the ERA's position in Orders 195 and 195-A that the proposed import of volumes in excess of 29,900 Mcf per day is not inconsistent with the public interest within the meaning of section 3 of the NGA. Accordingly, this final opinion and order grants Tennessee authority commencing November 1, 1989, through October 31, 2002, to import the full contract volumes of natural gas under its arrangement with TransCanada, as discussed herein.^{19/}

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 the remaining scheduled contract volumes under its arrangement with KannGaz Producers Ltd. (KannGaz) of up to 79,700 Mcf per day commencing November 1, 1989, through October 31, 1990, and up to 125,000 Mcf per day during the period November 1, 1990, through October 31, 2002.

B. With respect to the volumes authorized by this Opinion and Order, Tennessee shall file with the Office of Fuels Programs, Fossil Energy, 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 shall include a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis.

Issued in Washington, D.C., on October 31, 1989.

--Footnotes--

^{1/} On January 6, 1989, the authority to regulate natural gas imports and

exports was transferred from the ERA to the Assistant Secretary for Fossil Energy. DOE Delegation Order No. 0204-127 specifies the transferred functions (54 FR 11436, March 20, 1989).

2/ 1 ERA Para. 70,726. Order 195 was issued subsequent to publication by the ERA of a Notice of Application in the Federal Register (52 FR 25908, July 9, 1987) and an unopposed proceeding in which 11 interventions were granted.

3/ 42 U.S.C. 4321, et seq.

4/ See FERC Docket No. CP87-131-000, as amended in Docket No. CP87-131-001 and CP87-132-000, as amended in Docket No. CP87-132-001.

5/ Ocean State Power Project Final Environmental Impact Statement (FERC/EIS-0050, July 1988).

6/ 1 ERA Para. 70,785.

7/ FERC Docket Nos. CP87-131, et al.

8/ Tennessee certified that a copy of this modification request was served upon each party designated on the official service list for this docket pursuant to 19 CFR 590.107.

9/ 45 FERC Para. 61,010.

10/ 45 FERC Para. 61,324.

11/ 15 U.S.C. Para. 717b.

12/ 49 FR 6684, February 22, 1984.

13/ DOE/EIS-0140.

14/ 1 ERA Para. 70,810. Additionally, Ocean State Power and Ocean State Power II, DOE/ERA Opinion and Order Nos. 334 and 335, September 22, 1989 (unpublished).

15/ See Tennessee Gas Pipeline Company, 45 FERC Para. 61,010, rehearing granted in part and denied in part, 45 FERC Para. 61,324 (November 29, 1988).

16/ The environmental effects associated with the Niagara Spur facilities were discussed in the ERA's Record of Decision for the Ocean State

project (53 FR 36483, September 20, 1988).

17/ See supra note 15.

18/ See mitigation measure identified as number 18, on page 5-32 of the Ocean State Power Project FEIS.

19/ In conjunction with this order, FE is issuing a Record of Decision, pursuant to regulations of the Council on Environmental Quality (40 CFR Part 1505) and the DOE's guidelines for compliance with NEPA (52 FR 47662, December 15, 1987).