Cited as "1 ERA Para. 70,838"

Northwest Pipeline Corporation (ERA Docket No. 87-60-NG), January 31, 1989.

DOE/ERA Opinion and Order No. 297

Order Granting Amendment to Authorization to Import Natural Gas and Granting Interventions

I. Background

On October 26, 1987, Northwest Pipeline Corporation 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), to amend its authority to import Canadian natural gas from Westcoast at Kingsgate, British Columbia. Under DOE/ERA Opinion and Order No. 56 (Order 56), issued July 5, 1984, Northwest is authorized to import up to 100 MMcf per day of Canadian gas at Kingsgate through October 31, 1989.1/ Northwest requests an amendment to this authorization to increase the import volume for the remainder of the import term from 100 MMcf per day to up to 152 MMcf per day at Kingsgate.

The additional gas volumes would be purchased under a contract with Westcoast dated September 23, 1960, as amended (Kingsgate sales agreement). The Kingsgate sales agreement provides for purchases of up to 152 MMcf per day, effective November 1, 1987, under specific terms and conditions most recently amended by a letter agreement dated September 16, 1987 (Kingsgate amendment). The Kingsgate amendment modifies the gas take provisions and the two-part rate structure contained in a letter agreement dated October 27, 1986, amending both the Kingsgate sales agreement and the Fourth service agreement between Northwest and Westcoast that covers Northwest's imports at the Huntingdon, British Columbia, Sumas, Washington (Sumas), point of entry.

As amended, the two-part rate structure includes a demand charge comprised of related fixed transportation costs of Alberta Natural Gas Company Ltd., Pan-Alberta Gas Ltd., and NOVA, an Alberta Corporation, and the fixed administrative costs of Westcoast. The commodity rate is subject to recalculation quarterly beginning January 1, 1988, under a formula that adjusts the September/October 1987 base period rate of $1.50 per MMBtu to reflect subsequent changes in two different fuels, including Westcoast's sales price of gas to British Columbia Hydro and Power Authority (Hydro) for residential and commercial customers, and the sales price of Bunker C fuel oil in the Seattle and Portland areas. According to Northwest's application, either party may initiate renegotiation of the commodity charge at any time under certain conditions, including changes in alternate fuel price or availability, changes in the price of Northwest's domestic supply, and whether Northwest becomes an open-access transporter.2/

The volumetric provisions of the Kingsgate amendment obligate Northwest to take or pay for, at the commodity rate, a minimum annual volume of gas which, together with those volumes of gas purchased from Westcoast during the same contract year under the Fourth service agreement, equals 45 percent of Northwest's "actual system gas" sales made during each such year.3/ According to its application, Northwest's actual system sales are to be increased by certain qualifying displacement gas volumes and released domestic gas volumes, including any volume of Westcoast's or Northwest's firm system supply gas that is sold, either by Westcoast, or by a third party to whom such gas has been temporarily released, to one of Northwest's distribution or pipeline sales customers or to any end-user that could be served by such a distribution or pipeline sales customer and which, by mutual agreement between Northwest and Westcoast, constitutes a market sale that could have been made by Northwest at its posted tariff rates. However, for purposes of calculating the take-or-pay obligation, qualifying displacement gas volumes are excluded from volumes subject to take-or-pay. Northwest claims that the modified take-or-pay provision ultimately will reduce its take-or-pay obligation over the remainder of the term. Further, Northwest states that the minimum annual volume provisions are subject to renegotiation based on changes in Canadian or U.S. regulatory policies or rulings or Northwest's status as an open access transporter.

II. Interventions, Comments and Requests

The ERA issued a notice of the application on January 21, 1988, inviting protest, motions to intervene, notices of intervention, and comments to be filed by February 26, 1988.4/ Motions to intervene were filed by Alberta Northeast Gas, Limited, Washington Natural Gas Company, Northwest Industrial Gas Users (NWIGU), Southern California Gas Company, Pacific Interstate Transmission Company, Colorado Interstate Gas Company, Westcoast, Northwest Alaskan Pipeline Company, CP National Corporation (CP National), Southwest Gas Corporation (Southwest), Pacific Gas Transmission Company, and Mountain Fuel Resources, Inc., renamed Questar Pipeline Company (QPC), effective March 7, 1988. Northwest filed a timely reply to the interventions. This order grants intervention to all movants.

CP National and Southwest stated that, as customers of Northwest, each would be subject to the take-or-pay provision of the proposed Kingsgate amendment if Northwest were successful in its request still pending in FERC Docket No. TA88-3-37 et al., for passthrough of Canadian gas costs.5/ Each stated that it had filed for intervention in those dockets but neither furnished comments nor requested additional procedures in this docket.

Westcoast supported Northwest's application as enhancing Northwest's supply flexibility to meet the present need for its system and its customers. All other motions to intervene were filed without comment except those of NWIGU and QPC.

NWIGU, an organization comprised of 30 major industrial users of natural gas in Oregon, Washington, and Idaho that provides an information service to its members and participates on their behalf in various regulatory matters affecting their interest, stated that it has also intervened in Northwest's purchased gas adjustment (PGA) proceeding in FERC Docket No. TA88-3-37. NWIGU contended that, from the material filed by Northwest to date, they had been unable to ascertain the potential impact of the proposed amendment on Northwest sales rates and transportation rates. In addition to their intervention request, NWIGU stated that "a technical conference should be convened in order that all parties and the ERA can be apprised of all ramifications of the proposed amendment." 6/

QPC asserted that Northwest's application did not establish a need for the proposed increase in its Kingsgate's import authority,7/ and argued it would not be in the public interest to grant Northwest's request unless such need is shown or a corresponding decrease in Northwest's import authority is ordered for the Sumas delivery point. QPC based its position on an anticipated downward revision in the Northwest/Westcoast contract demand figure from the current 702 MMcf per day (550 MMcf per day at Sumas and 152 MMcf per day at Kingsgate) to a combined range of 200-250 MMcf per day due to lower anticipated sales demand from Northwest's customers.

On March 14, 1988, Northwest filed an answer to the motions to intervene principally addressing QPC's comments on the issue of the need for the requested additional import quantity and whether a technical conference should be convened, as suggested by NWIGU. Northwest took the position that no additional procedures were required because all matters relevant to the consideration of the public interest set forth in Section 3 of the NGA had been adequately addressed. Specifically, Northwest asserted that the terms of the Kingsgate amendment were fully explained in its application and provide for quarterly adjustments in the commodity price to reflect changes in the price of Bunker C fuel oil in its market area and link minimum annual volume requirements to the actual level of Northwest's annual pipeline sales, thereby assuring that gas delivered under the contract will be competitively priced over the remainder of the primary import term.

With respect to the issue of need, Northwest asserted that for over 25 years its Kingsgate agreement with Westcoast has provided for purchases of up to 152 MMcf per day and that this arrangement constitutes the principal gas supply source for the Spokane, Washington, area and other Northwest markets. Northwest claimed that this part of its system could not accommodate replacement gas supplies from other sources without substantial and uneconomic design modifications.8/ Northwest stated that these factors, particularly in light of the concurrent reduction in its contract demand level from 809 MMcf per day to 550 MMcf per day for purchases of Canadian gas at Sumas under its Fourth service agreement with Westcoast, demonstrated need for the requested Kingsgate import to maintain system supply availability and enhance Northwest's flexibility to meet its system's needs.

With respect to QPC's request for a corresponding decrease in its import authority at Sumas, Northwest contended that it is requesting only restoration to the historic level of its import authority which, until the 1986-87 contract year, had been available since 1961. Further, Northwest stated that under its open-access proposal filed at the FERC, its customers could convert without limitation their contract demand level to transportation on the Northwest system of gas purchased elsewhere. Northwest added that, "because only two years remain in the primary term of both the Kingsgate and the Fourth service agreements and because of the uncertainty with regard to Northwest's open-access status, the 1987 amendments to the agreements were negotiated to provide sufficient flexibility to be workable whether or not Northwest has accepted a blanket certification issued under FERC Order No. 500." 9/

III. Subsequent Matters

During the ERA's consideration of intervenors' comments and Northwest's response, it became apparent that Northwest's request for open-access certification was moving more quickly toward resolution than anticipated. Because Northwest's status as an open-access transporter affected operation of certain terms in the Kingsgate amendment, including, for example, serving as a basis for renegotiation of the commodity charge and minimum annual volume obligations, the ERA decided to suspend further consideration of Northwest's request in this docket until such time as the ERA was notified that Northwest's open-access status was settled. Northwest accepted the FERC's certificate and terms as an open-access transporter under Orders 436/500 on June 10, 1988, and by letter dated October 10, 1988, asked the ERA to approve its requested increase in import authority for Kingsgate.

In that letter, Northwest also advised the ERA that on September 30, 1988, it notified Westcoast that it was invoking the force majeure provisions of the Fourth service agreement and requesting a declaratory order relieving it of contractual obligations for the remaining 13 months of the term of that contract. Northwest stated that, under the Orders 436/500 open-access certificate provisions, its sales customers nominated to convert from sales service to firm transportation on its system a total of 1,144 MMcf per day representing 78 percent of Northwest's total jurisdictional sales contract demand of 1,482 MMcf per day. Of that total nomination, Northwest stated that customers requested firm transportation of 663 MMcf per day of Canadian natural gas through the Sumas, Washington, point of entry.

According to Northwest, due to the change of its status, actions of the FERC and of Northwest's customers, Northwest was unable to pay to Westcoast minimum demand charges under the Fourth service agreement as amended and, therefore, invoked force majeure to suspend Northwest's obligations under that agreement as of October 1, 1988.

Northwest further advised the ERA that its actions with regard to the Fourth service agreement do not affect Northwest's importation of natural gas at Kingsgate pursuant to its Kingsgate gas sales agreement with Westcoast, as amended, and its requested increase in import authority at Kingsgate in this docket is still deemed necessary to maintain a suitably balanced system supply for its remaining full service customers in that market area.

On November 4, 1988, in order to develop further the decisional record, the ERA issued a procedural order requesting Northwest to furnish additional information clarifying its current situation and to address a number of questions relevant to the ERA's consideration of competitiveness and need. The order also provided an opportunity for further comment by others. The comment period for all responses expired November 22, 1988. In addition to the response from Northwest, comments were filed by Westcoast and Southwest in support of Northwest's assertion of need and the ERA's expeditious approval of the application.

In general, Northwest furnished a schedule of system sales volumes and restated how its take-or-pay obligation is calculated at the 45 percent of system sales formula rate. ERA approval of the requested increase at Kingsgate, Northwest stated, will enhance its ability to meet the minimum annual volume requirements under the present contract provisions. In addition, Northwest pointed out that while the opportunity to renegotiate the minimum annual volume still exists under the Kingsgate amendment, it has not requested renegotiation because it does not believe that the circumstances warrant such renegotiation. Northwest claims that according to its current sales projections with Sumas purchases at zero, it needs 113 MMcf per day available through Kingsgate and at times would need to have available up to the full 152 MMcf per day of the Kingsgate supply.

With respect to pricing flexibility, Northwest added that, because the proposed imported gas is indexed to both the Canadian gas market price in the area and the price of Bunker C fuel oil in Northwest's largest markets, the proposed import would remain competitive over the term without the need to initiate renegotiation of the commodity charge with its supplier. Northwest states that it intends to pass through Westcoast's commodity charge as billed. Westcoast's demand charges would be included in the demand portion of Northwest's sales rate to the extent allowed by FERC Opinion No. 256. The balance of the demand charges would be included in the commodity portion of Northwest's sales rates.

Northwest asserted that in looking beyond November 1, 1989, it expects that, as long as it has an obligation to perform a significant merchant function in that part of its system, it will pursue negotiations for the long-term purchase of gas through Kingsgate with all potential suppliers including Westcoast.

IV. Decision

The application to amend its existing import authorization filed by Northwest and the full record have been evaluated to determine if the requested amendment meets the public interest requirements of Section 3 of the NGA. Under Section 3, an import must be authorized unless there is a finding that it "will not be consistent with the public interest." 10/ This determination is guided by the DOE's natural gas import policy guidelines.11/ Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test. Need for the gas and security of supply are also important considerations.

The amendment to Northwest's authorization, as proposed by the applicant, is consistent with DOE's policy guidelines. We emphasize that the requested increase in volume would apply to an existing authorization and a contract term that expires on October 31, 1989, less than ten months from now. The Kingsgate amendment provides for flexible and market-sensitive pricing of these volumes over the remainder of the term. In addition, Northwest asserts that the requested flexibility to import up to 152 MMcf per day will enhance its ability to meet minimum annual volume obligations. These assertions have not been disputed. Nor did existing purchasers of Northwest who intervened with concerns about need for the additional volumes at Kingsgate reassert these initial concerns in response to the ERA's November 4 order or dispute Northwest's claim that it currently needs volumes in excess of its present 100 MMcf per day authorization to meet service obligations and would at times need the full 152 MMcf per day Kingsgate supply. I find that the proposed increase requested by Northwest is needed, and that the provisions of the Kingsgate amendment assure that the proposed increase in the import authorization will be competitively priced during the term.

I also find that the natural gas supply relied on by Northwest is sufficiently secure to meet the balance of its commitment for the remainder of the term and will not lead to any undue dependence on an unreliable source of supply or otherwise compromise the energy security of the nation.

As noted in Part III above, only two of the original twelve intervenors responded to Northwest's answers to the ERA's November 4 order, and both of those responses supported the requested amendment. As a practical matter, we believe that the requests by intervenors for an additional procedure and a condition have been overtaken by the events discussed in this order and are deemed to have been withdrawn. However, the requests have not been formally withdrawn and are therefore being denied in the order that follows. NWIGU has not demonstrated that a conference will materially advance this proceeding. Its references to the "ramifications of the proposed amendment" are both speculative and not reasserted. QPC does not dispute Northwest's claim that the Kingsgate volumes represent an independent supply arrangement that Northwest needs to meet system demand, or otherwise support its request for a corresponding decrease in Northwest's import authority at Sumas.

After taking into consideration all the information in the record of this proceeding, I find that granting approval of an amendment to Order 56 to increase the import volume for a term ending October 31, 1989, from 100 MMcf per day to up to 152 MMcf per day at Kingsgate, is not inconsistent with the public interest.

ORDER

For the reasons set forth above, it is ordered that:

A. The import authorization previously granted to Northwest Pipeline Corporation (Northwest) in DOE/ERA Opinion and Order No. 56 (Order 56), issued July 5, 1984, is hereby amended to increase the volumes authorized for import at Kingsgate from 100 MMcf per day to up to 152 MMcf per day for the term ending October 31, 1989, in accordance with the provisions of Northwest's gas purchase agreement with Westcoast Transmission Company Limited dated September 23, 1960, as amended.

B. All other terms and conditions of the authorization contained in Order 56 remain in effect.

C. The request by Northwest Industrial Gas Users for a technical conference is denied.

D. The request by Questar Pipeline Company that any order granting an increase in import volumes at Kingsgate should be matched by a corresponding decrease in Northwest's import authorization for the Sumas delivery point is denied.

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 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 January 31, 1989.

--Footnotes--

1/ Order 56 is the most recent in a series of import orders related to Northwest's Kingsgate authority. This authority originated in a Federal Power Commission order issued September 21, 1973 (Docket CP73-332). Subsequent orders amended Northwest's import authority in response to changes both in its contractual arrangements with Westcoast and in related National Energy Board (NEB) export authorizations. In particular, ERA Opinion and Order No. 38 (Order 38), issued December 21, 1981, continued Northwest's authority to import natural gas at a price not to exceed the Canadian border price of $4.94 per MMBtu. The order extended the Kingsgate import authority in accordance with the terms of Northwest's gas purchase agreement with Westcoast and included a phased-in reduction of volumes conforming to Westcoast's NEB Export License GL-4. Order 56 continued the pricing authority and granted Northwest authority to shift up to 100 MMcf per day of Canadian gas authorized for import at Sumas, Washington, to the Kingsgate point of entry. That authority continues through October 31, 1989.

2/ Northwest accepted a blanket certification for open access transportation under the FERC Order Nos. 436/500 (Order 436) program in June

1988. Order 436 established a voluntary program under which a pipeline agrees to provide non-discriminatory transportation for all customers in return for blanket certificate authority.

3/ According to the terms of the agreement, deficient annual purchases of three percent or less in a contract year will be added to the minimum annual volume of the following contract year and paid for when actually taken. Conversely, up to three percent of any excess purchases in one contract year, if total purchases do not exceed 105 percent of the minimum annual volume, will be subtracted from the minimum annual volume in the subsequent year. Deficiency volumes in excess of three percent must be paid for but can be made up in a subsequent year.

4/ 53 FR 2270, January 27, 1988.

5/ In a related proceeding, a Northwest proposal to direct bill gas costs to customers based on purchases made during the 1987-88 period was approved by the FERC (Docket Nos. RP89-1-000 and 001, 45 FERC Para. 61,224) in early November, retroactive to October 1, conditioned upon the "outcome of any underlying proceedings," including Docket No. TA88-3-37 et al., in terms of the effect of such proceedings on the "level of costs to be directly billed."

6/ Motion to Intervene of the NWIGU, at 3.

7/ Motion to Intervene of QPC, at 3.

8/ Answer of Northwest to Motions to Intervene, at 3.

9/ Id., at 7.

10/ 15 U.S.C. Sec. 717b.

11/ 49 FR 6684, February 22, 1984.