

Cited as "1 FE Para. 70,263"

Vermont Gas Systems, Inc. (FE Docket No. 89-68-NG), October 26, 1989

DOE/FE Opinion and Order No. 344

Emergency Interim Order Amending Authorization to Import Natural Gas from Canada

## I. Background

On October 4, 1989, Vermont Gas Systems, Inc. (Vermont Gas), filed an application with the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127, to amend its existing authorization to import Canadian natural gas by increasing the maximum daily import volumes to 32,000 Mcf for the remainder of the import term and extending the expiration date of its authority for one year from October 31, 1991, to October 31, 1992. No new facilities would be needed for the importation or transportation of gas under the proposed amendments. Vermont Gas requested that the authorization be granted by October 30, 1989. Alternatively, Vermont Gas requested that if a final order could not be issued by October 30, 1989, it be given temporary emergency authority to import the additional volumes beginning on that date, and continuing until such time as a final decision is made in order to assure that there are sufficient gas supplies to meet the expected winter heating season requirements of its customers.

Vermont Gas is a local distribution company which is incorporated under the laws of the State of Vermont and which provides natural gas service to residential, commercial and industrial customers. Vermont Gas receives its total supply of natural gas from TransCanada PipeLines Limited (TransCanada) under a gas purchase contract dated November 28, 1985, as amended (1985 contract). The delivery point is at the international boundary near Highgate Springs, Vermont. Vermont Gas sells and distributes this gas supply entirely within the State of Vermont. Since it is not interconnected with the U.S. pipeline system, Vermont Gas cannot obtain any domestic natural gas supplies.

In DOE Opinion and Order No. 143,1/ Vermont Gas was authorized to increase incrementally from 25,600 Mcf per day to 32,000 Mcf per day the firm volumes of gas imported from TransCanada over a three-year period ending October 31, 1989. Beginning November 1, 1989, Vermont Gas' authorized import quantity would revert to 25,600 Mcf per day in accordance with DOE Opinion and Order No. 39 (Order 39).2/ Order No. 39 expires October 31, 1991.

On May 1, 1989, Vermont Gas entered into a letter of agreement with Western Gas Marketing Limited (WGML), TransCanada's affiliate (acting on its

own behalf and as agent for TransCanada), concerning a new contract for the purchase of gas on a firm, long-term basis after October 31, 1989. Subsequently, on July 31, 1989, Vermont Gas applied in FE Docket No. 89-50-NG to amend its import authorization to incorporate the terms contained in the May 1 letter of agreement. However, the new contract was not executed because it failed to receive approval by the producers of the gas and the earlier application was withdrawn contemporaneously with the filing of the application in this docket.

Absent the new contract, Vermont Gas and WGML agreed on September 29, 1989, subject to producer approval, to amend the quantity and pricing provisions of the 1985 contract for the remaining term of that contract which expires October 31, 1992. Specifically, the maximum daily contract demand under the 1985 contract would be increased to 32,000 Mcf. In addition, the September 29 agreement provides that commencing November 1, 1989, the import price would consist of a demand and commodity charge. The monthly demand charge would be equal to the monthly demand toll per Mcf for transportation of the gas on TransCanada's system from the Province of Alberta to the point of delivery at Highgate Springs, Vermont. The demand charge would be subject to certain credits during the summer months (April through October) for any excess capacity that TransCanada or WGML may be able to use for sales to other parties. The commodity charge would be computed under a formula starting with a base price of \$1.92 (U.S.) per MMBtu for gas that is delivered to Vermont Gas' firm customers and \$1.55 (U.S.) per MMBtu for gas delivered to interruptible customers. The commodity charge would be recalculated annually on November 1, based on changes in the published average price of No. 2 fuel oil and No. 6 residual oil in Albany, New York. In an October 13, 1989, letter, Vermont Gas indicated that at 100 percent load factor the average delivered price at the international border for November 1989 would be \$2.79 (U.S.) per Mcf.

The 1985 contract provides for price renegotiation at regular intervals during the contract period and for arbitration if the parties are unable to agree. The September 29 agreement redefines when renegotiation may be requested, adds a further basis for renegotiation in the event of certain market events, and establishes new criteria to be used in the event of any arbitration.

In support of its application, Vermont Gas stated that the terms of the 1985 contract, as amended by the September 29 agreement, would provide for a secure supply of natural gas at a price which is competitive with alternate fuels in Vermont. Vermont Gas asserted that the continued importation of up to 32,000 Mcf of gas per day, as was authorized to be imported over the past year, is needed to meet its firm market requirements.

## II. Decision

To avoid the adverse consequences of having an insufficient supply to meet the demand for gas in its service area during the upcoming winter heating season, Vermont Gas requested that authorization be granted by October 30, 1989. In the event a final order could not be issued by that time, Vermont Gas requested an emergency interim import authorization. Vermont Gas presents the DOE with a situation in which prompt regulatory action is indicated. In making a decision at this stage in the proceeding, we have considered Vermont Gas' request for either waiver of the comment period, or an emergency interim authorization, in light of DOE's responsibilities under section 3 of the NGA. Under section 3, imports and exports are to be authorized unless there is a finding that they "will not be consistent with the public interest." 3/

As to Vermont Gas' request that the comment period be waived to the extent necessary to allow the issuance of a final order by October 30, 1989, it is clear that to do so would effectively deprive interested parties from any meaningful opportunity to comment on the proposed import arrangement. On the other hand, we believe that Vermont Gas has stated reasons sufficient to justify an emergency interim order under DOE regulations.<sup>4/</sup> For one thing, Vermont Gas is wholly dependent for its gas supply on TransCanada and cannot obtain any gas from domestic pipelines. Also, it was through no fault of Vermont Gas that the Canadian suppliers failed to approve its May 1, 1989, letter of agreement with WGML, and thus precipitated the need for the last minute September 29 agreement. Further, denial of an emergency interim order could have severe adverse effects on Vermont Gas' customers. Finally, the pricing and other provisions of the 1985 contract, as amended by the September 29 agreement, appear on their face to assure Vermont Gas a competitively priced, needed, and secure supply of natural gas for the length of its contract term.

In view of the above considerations and the facts asserted by Vermont Gas, the DOE has concluded that issuing an emergency interim order is not inconsistent with the public interest. This order amends Order 39 to authorize Vermont Gas to import up to 32,000 Mcf of natural gas per day, in accordance with the provisions of the September 29 agreement between Vermont Gas and WGML, until a final determination is made on the application. A notice of Vermont Gas' application to amend its existing authorization is being issued simultaneously with this order. Parties wishing to intervene or comment on Vermont Gas' application and/or this order may do so pursuant to the public comment procedures explained in the notice.

#### ORDER

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

- A. The import authorization granted to Vermont Gas Systems, Inc.

(Vermont Gas), in DOE Opinion and Order No. 39, issued on March 1, 1982, in Docket No. 81-33-NG, as amended by DOE Opinion and Order No. 143, issued on September 5, 1986, in Docket No. 86-37-NG, is hereby further amended, on an emergency interim basis until a final determination is made on Vermont Gas' application filed in this docket, to permit Vermont Gas to import up to 32,000 Mcf of natural gas per day from October 31, 1989, through October 31, 1992.

B. Vermont Gas is hereby authorized to import volumes authorized in Ordering Paragraph A above in accordance with the pricing provisions and other terms of its November 28, 1985, gas purchase contract with TransCanada PipeLines Limited, as amended by the September 29, 1989, letter agreement between Vermont Gas and Western Gas Marketing Limited.

Issued in Washington, D.C., on October 26, 1989.

--Footnotes--

1/ 1 ERA Para. 70,666 (September 5, 1986).

2/ 1 ERA Para. 70,544 (March 1, 1982).

3/ 15 U.S.C. Sec. 717b.

4/ 10 CFR Para. 590.403.