Cited as "1 FE Para. 70,265"

Northwest Pipeline Corporation (FE Docket No. 89-60-NG), October 30, 1989.

DOE/FE Opinion and Order No. 346

Interim Order Amending Authorization to Import Natural Gas from Canada

I. Background

On August 22, 1989, Northwest Pipeline Corporation (Northwest) filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA),1/ to extend the term of Northwest's existing import authorization which expires October 31, 1989. Under DOE/ERA Opinion and Order No. 297 (Order 297),2/ issued January 31, 1989, Northwest is currently authorized to import up to 152 MMcf per day of Canadian natural gas from Westcoast Energy Inc. (Westcoast) via the import point near Kingsgate, British Columbia, through October 31, 1989. The imported gas is resold to local distribution companies (LDCs) and other downstream customers. The extension of the term of the authorization requested would permit Northwest to continue to import up to 152 MMcf per day of Canadian natural gas until October 31, 2004, and year to year thereafter.

To prevent a service interruption to LDCs, residential users and other downstream customers dependent on Northwest's imported gas supply, Northwest also requests that it be granted temporary emergency authority to continue to import natural gas at currently authorized levels in the event that a final order cannot be issued on its application by November 1, 1989. Since it is clear that the DOE cannot complete the required administrative procedures, including providing for a 30-day public comment period, in time to issue a new decisional order in this docket by the end of October, the matter before the DOE in this portion of the proceeding is whether issuance of an emergency interim order is consistent with the public interest.

The gas currently imported by Northwest at Kingsgate is purchased under a contract with Westcoast dated September 23, 1960, as amended (Kingsgate agreement) and is transported by Pacific Gas Transmission Company (PGT) for Northwest's sales delivery points located on PGT's pipeline and to the Starr Road (Spokane) interconnect between PGT's pipeline and Northwest's Spokane lateral. Historically, Northwest has relied upon the purchases of gas imported at Kingsgate to help meet its firm sales requirements with Cascade Natural Gas Corporation (Cascade), Washington Natural Gas Company (Washington Natural), The Washington Water Power Company (Washington Water Power), and other downstream customers. The service agreements with these customers are scheduled to terminate concurrently with Northwest's existing Kingsgate import authority on October 31, 1989. In the transition to becoming an open access transporter, Northwest states that it has completed negotiations with its existing customers that extend Northwest's obligation to continue providing a significant volume of firm gas service through an initial term ending October 31, 2004.

Northwest also states that it has renegotiated the Kingsgate agreement with Westcoast and has executed a new amendment to that agreement dated August 15, 1989. The new Kingsgate agreement, which is to become effective November 1, 1989, extends the primary term of the agreement from October 31, 1989, to October 31, 2004, consistent with Northwest's new sales agreements with its customers. It also continues the same pricing formula for the Canadian gas currently in effect under Northwest's existing import authorization but modifies the minimum take provisions and the provisions for renegotiation of the agreement. The existing pricing formula provides for a two-part, demand/commodity rate structure. The demand charge consists of: (1) fixed transportation costs of Alberta Natural Gas Company, Ltd. for transportation of gas that Westcoast sells to Northwest at Kingsgate, net of certain revenue credits for interruptible services provided by Alberta Natural and Westcoast; (2) Westcoast's fixed administrative costs allocated to gas sales to Northwest at Kingsgate; and (3) the demand charge paid by Pan-Alberta Gas Ltd. (Pan-Alberta) to NOVA Corporation of Alberta (NOVA) for transportation of gas sold by Pan-Alberta to Westcoast under the Coleman Agreement 3/ for delivery of gas to Westcoast and subsequent resale to Northwest at Kingsgate.

The commodity charge is the commodity price for the gas determined under the currently effective September 16, 1987, amendment to the Kingsgate gas sales agreement, subject to recalculation on January 1, 1990, and quarterly thereafter to maintain a market responsive price. The recalculation formula adjusts the September/October 1987 base period rate of $1.50 provided for in the contract to reflect changes in the price of two different fuels, the sales price of natural gas sold by Westcoast to B.C. Gas, Inc. (formerly British Columbia Hydropower Authority), for residential and commercial customers and the sales price of Bunker C fuel oil in the Seattle and Portland areas. The June 1989 commodity price was approximately $1.36 (U.S.) per MMBtu. Northwest states, however, that notwithstanding these pricing provisions, the annualized price of gas to Northwest may not be less than any minimum price prescribed for natural gas exports by Canada's National Energy Board.

Under the Kingsgate agreement, as currently amended, either party may initiate renegotiation of the commodity charge during the calendar years 1991 and 1992, if, over a 12-month period ending July 1 of such calendar years, the total charge per MMBtu, calculated on a 100 percent load factor basis, paid by Northwest under the Kingsgate agreement is at least ten percent above or below the average price paid by Northwest for U.S. domestic market-out gas4/ plus the average gathering and conditioning rates paid to Northwest by all shippers. Commencing in 1993, either Northwest or Westcoast, prior to May 15 of any calendar year, may initiate renegotiation of the terms and conditions of the Kingsgate agreement. In addition, renegotiation opportunities are provided for in the event of regulatory, decisional, or policy changes by the U.S. or Canadian governments that would make continued performance of the contractual obligations of either party difficult if not impossible under existing terms. If Northwest and Westcoast are unable to reach timely agreement on new terms and conditions under the renegotiation procedures, then the Kingsgate agreement may be terminated.

The volumetric provisions of the Kingsgate agreement, as currently amended, obligate Northwest to take or pay for, at the commodity rate, a minimum annual volume of gas equal to 35 percent of Northwest's actual system gas sales in the contract year. If during any contract year, Northwest's actual system gas sales are in excess of 58 percent of the sum of Northwest's daily contract demand obligations for firm gas service, then Northwest's minimum take-or-pay obligation is increased by one-half of the percentage by which Northwest's actual system gas sales exceed the 58 percent level but not above 45 percent of Northwest's actual system gas sales.

The volumetric provisions of the Kingsgate agreement further provide that "deficiency volumes" in excess of three percent of the minimum annual quantity Northwest is obligated to take or pay for must be paid for at the end of the contract year but can be made up during the following contract year after Northwest has first purchased its minimum annual quantity for the contract year. However, if Northwest is deficient in its annual purchases by no more than three percent in a contract year, those deficiency volumes will be added to Northwest's minimum annual volume obligation for the following contract year. Similarly, any excess volumes purchased by Northwest over and above the minimum annual volume up to three percent thereof would be subtracted from the following contract year's minimum annual quantity.

Further, although the contract demand under the Kingsgate agreement continues to be 151,731 Mcf of natural gas per day, if Northwest's daily take nominations should exceed the maximum daily volumes committed to Westcoast by Pan-Alberta under the Coleman agreement of 122 MMcf per day, then Northwest is only obligated to use reasonable efforts to obtain and deliver the additional gas on an interruptible basis.

In support of its application for both an emergency interim order and a final order authorizing the continued import of 152 MMcf per day of natural gas at Kingsgate, British Columbia, Northwest asserts that the flexibility to respond to market conditions built into the price adjustment and renegotiation provisions of Northwest's new Kingsgate gas supply contract should continue to assure the competitiveness of the gas. Further, and with respect to the request for an emergency interim order in particular, Northwest asserts that continued imports of Canadian gas at Kingsgate are required to meet its firm supply requirements to Cascade, Washington Natural, and Washington Water Power, which because of physical delivery limitations could not be met from other gas supply sources.5/ Accordingly, Northwest asserts that issuance of an emergency interim order would permit needed gas to continue to flow pending completion of DOE's consideration of Northwest's request for a final order, and is therefore consistent with the public interest.

The DOE issued a notice of this application on September 29, 1989,6/ inviting protests, motions to intervene, notices of intervention, and comments to be filed by November 6, 1989.

II. Decision

Northwest's application presents the DOE with a situation in which prompt regulatory action is indicated. In making a decision at this stage in the proceedings, the DOE considered Northwest's request in light of the DOE's responsibility established by Section 3 of the NGA. Under Section 3, imports and exports of natural gas are to be authorized unless there is a finding that they "will not be consistent with the public interest." The DOE believes that Northwest's application provides reasons sufficient to justify an import authorization of limited duration. Northwest filed its request on August 22, 1989, shortly after it had completed renegotiation of its gas supply and gas service agreements. Thus, Northwest acted on as timely a basis as possible under the circumstances. Issuance of an emergency interim order for a limited term at this time would permit Northwest to continue to meet its firm service obligations to LDCs and other downstream customers who are dependent on Northwest for gas supplies, and whose needs could not adequately be met from other sources. Approval of Northwest's request for an emergency interim authorization would therefore prevent any penalty or hardship from falling on residential and public utility users of the imported gas that might otherwise occur if the flow of gas were cut off during the time required for completion of the comment period and compilation of an adequate record on Northwest's import proposal.

Further, it appears, based solely on Northwest's application, and unless refuted by public comments or other information subsequently entered into the record, that the gas Northwest seeks to import will continue to be competitive and needed. The Kingsgate agreement, as amended on August 15, 1989, retains the same pricing formula for the gas as was in the agreement prior to this latest amendment. This formula provides for adjusting the price of the gas to reflect changes in the price of competing gas and Bunker C fuel oil in Northwest's market area. Further, the new Kingsgate agreement continues to link Northwest's take-or-pay obligations to Northwest's actual system supply sales, thereby minimizing the impact of Northwest's minimum take obligations on competitiveness of the gas. In addition, several provisions in the new agreement provide opportunities for renegotiation of the contract should that be necessary to assure market responsiveness of the gas which, according to the application, continues to be needed by Northwest's historical customers.

In view of the above considerations and the facts asserted by Northwest, the DOE concludes that authorizing an extension of Northwest's import authorization for a limited term until a final determination is made on the application after the close of the public comment period on November 6, 1989, will not be inconsistent with the public interest.

ORDER

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

A. The natural gas import authorization previously granted to Northwest Pipeline Corporation (Northwest) in DOE/ERA Opinion and Order No. 56 (Order 56), issued July 5, 1984, as amended by DOE/ERA Opinion and Order No. 297 (Order 297), issued January 31, 1989, is hereby amended to temporarily extend the term of the authorization beyond October 31, 1989, in accordance with the amended Kingsgate agreement between Northwest and Westcoast Energy, Inc. (Westcoast), submitted as part of the application filed by Northwest in this docket. This authorization is valid only until a final determination is made on Northwest's application that is the subject of this proceeding and as long as the natural gas is transported using existing pipeline facilities and capacity available to Northwest.

B. All other conditions and terms of the import authorization contained in Order 56, as amended by Order 297, shall remain in effect.

Issued in Washington, D.C., on October 30, 1989.

--Footnotes--

1/ 15 U.S.C. Sec. 717b.

2/ Order No. 297 is the most recent in a series of import orders related to Northwest's Kingsgate import 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), 1 ERA Para. 70,537 (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. DOE/ERA Opinion and Order No. 56, 1 ERA Para. 70,566 (July 5, 1984), continued the pricing authority and granted Northwest authority to shift up to 100 MMcf per day of Canadian gas authorized for import at Sumas, to the Kingsgate point of entry. That authority continues through October 31, 1989. Order 297, 1 ERA Para. 70,838 (January 31, 1989), increased Northwest's authorized Kingsgate import volume from 100 MMcf per day to 152 MMcf per day for the remainder of the import term.

3/ The "Coleman Agreement" refers to Pan-Alberta's gas supply contract under which it is obligated to deliver gas to Westcoast near the town of Coleman, Alberta, Canada.

4/ Market-out gas is defined in the Kingsgate gas sales agreement between Northwest and Westcoast as U.S. domestic gas purchased by Northwest for its system gas sales under a contract having a term of at least one year with a market-out price adjustment provision to allow the price of the gas to be market responsive.

5/ Northwest cites Klamath Falls, Oregon, and Spokane, Washington, as examples of areas that could not receive adequate firm gas service from other sources because of pipeline capacity limitations.

6/ 54 FR 41331, October 6, 1989.