

Cited as "1 FE Para. 70,273"

Boundary Gas, Inc. (ERA Docket No. 88-64-NG), December 8, 1989.

DOE/FE Opinion and Order No. 358

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

### I. Background

On October 12, 1988, Boundary Gas, Inc. (Boundary), filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order No. 0204-111, to amend its long-term authorization to import Canadian natural gas.<sup>1/</sup> Boundary requested that its authorization be amended to allow it to import up to 92,500 Mcf per day through January 15, 2003. Boundary would purchase the natural gas from TransCanada PipeLines Limited (TransCanada) and resell the gas to the 15 stockholders of Boundary. Tennessee Gas Pipeline Company (Tennessee) would transport the gas in the U.S. for all the stockholders except National Fuel Gas Supply Corporation, which would transport its own volumes. No new facilities would be needed for the importation and transportation of gas under the proposed amendment.

Boundary is a close corporation under the laws of Delaware and is wholly owned by the 15 stockholders of Boundary (the Repurchasers), all of which are local distribution companies or natural gas pipelines primarily serving affiliated distribution companies located in the northeastern United States. The Repurchasers are: the Brooklyn Union Gas Company, Granite State Gas Transmission, Inc., New Jersey Natural Gas Company, Boston Gas Company, the Connecticut Light and Power Company, Consolidated Edison Company of New York, Inc., National Fuel Gas Supply Corporation, Long Island Lighting Company, Connecticut Natural Gas Corporation, Essex County Gas Company, Manchester Gas Company, Gas Service, Inc., Valley Gas Company, Berkshire Gas Company, and Fitchburg Gas and Electric Light Company.

On August 9, 1982, the Administrator of the ERA issued DOE/ERA Opinion and Order No. 45 (Order No. 45) conditionally authorizing Boundary to import natural gas into the northeastern United States.<sup>2/</sup> Final authority was conditioned upon completion of the appropriate environmental analysis. The gas was to be purchased from TransCanada. Boundary was authorized to import a total of 675.24 Bcf of natural gas, up to 185,000 Mcf of gas per day, for a period not to exceed ten years from the date deliveries commenced or from November 1, 1982, whichever occurred first, plus one year for receipt of make-up gas.

Subsequent to the issuance of Order No. 45, Boundary reduced the scope of its original import proposal as a result of the Canadian National Energy Board's (NEB) January 27, 1983, omnibus export decision in which TransCanada was authorized to export and sell to Boundary less than half of its requested volumes. Because of the limitations on pipeline capacity in Canada and the U.S. at the time the natural gas sales were to begin, TransCanada and Boundary agreed to divide the reduced Boundary project into two phases. The first phase, termed Boundary Phase I, involved importing 40,000 Mcf of gas per day over existing facilities commencing November 1, 1984, and continuing until facilities were available for Boundary Phase II, at which time the full 92,500 Mcf per day authorized by the NEB would be imported.

The FERC conducted an environmental review of the boundary Phase I project and, on February 2, 1984, authorized the resale of those volumes.<sup>3/</sup> The ERA, after reviewing the environmental analysis, issued DOE/ERA Opinion and Order No. 45-B, removing the condition imposed in Order 45 for the Boundary Phase I volumes.<sup>4/</sup> The FERC conducted an environmental review of the Boundary Phase II project and, on July 24, 1987, authorized the resale of those volumes.<sup>5/</sup> The DOE, after reviewing the environmental material prepared by the FERC, as well as conducting its own environmental analysis, issued DOE/FE Opinion and Order No. 45-C, removing the condition imposed in Order No. 45 for the Boundary Phase II volumes.<sup>6/</sup>

On March 5, 1985, Boundary, pursuant to DOE's new natural gas import policy guidelines,<sup>7/</sup> submitted, for informational purposes, an amendment to its Boundary Phase I gas purchase contract with TransCanada (Phase I contract). The Phase I contract, as amended, featured a two-part demand/commodity rate structure with monthly adjustments, an annual renegotiation provision, an arbitration clause and elimination of take-or-pay requirements. On December 17, 1985, Boundary submitted an informational filing enclosing the gas purchase contract between Boundary and TransCanada for the Boundary Phase II volumes (Phase II contract). The relevant pricing, arbitration and take-or-pay terms of the Phase II contract were essentially the same as those contained in the amended Phase I contract.

In its current application, Boundary is seeking authorization to amend and extend its import authorization in accordance with the provisions of the August 31, 1988, Precedent Agreement to First Amendment to Phase II Gas Purchase Contract (precedent agreement) and the form of the First Amendment to Phase II Gas Purchase Agreement (Phase II amendment). The Phase II amendment will be executed by Boundary and TransCanada as soon as the conditions of the precedent agreement have been met.

The Phase II contract currently provides for a total contract quantity of 330,070 MMcf of natural gas with daily contract quantities (DCQ) of 92,500 Mcf from November 1, 1988, through October 31, 1994, which then decrease until

the end of the contract term on November 1, 1996. The Phase II amendment would increase the total contract quantity to 552,716 MMcf and extend the contract through January 15, 2003. The DCQ would be 92,500 Mcf throughout the term of the contract. The Phase II amendment would conform the Phase II contract term with the terms of the gas transportation contracts between Tennessee and the Repurchasers.

In addition to extending the term and increasing the contract quantities of the Phase II contract, the Phase II amendment would eliminate the producer fixed cost component from the Phase II demand charge and would further amend the demand charge provision to reflect the adoption of a two-part rate by NOVA, an Alberta corporation. The Phase II amendment also contains a revised gas supply provision that would provide Boundary with specific assurances regarding the deliverability of the gas over the term of the contract, including a commitment by TransCanada to indemnify Boundary for any increased costs incurred as a result of a deliverability shortfall.

A notice of the application was issued on October 4, 1989, inviting protests, motions to intervene, notices of intervention and comments to be filed by November 13, 1989.<sup>8/</sup> Interventions in support of the application were filed by Granite State Gas Transmission, Inc., Fitchburg Gas and Electric Light Company, Connecticut Natural Gas Corporation, Long Island Lighting Company, Western Gas Marketing Limited, and Boston Gas Company. This order grants intervention to those movants.

## II. Decision

The application filed by Boundary has been evaluated to determine if the amended import arrangement 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."<sup>9/</sup> This determination is guided by the DOE's natural gas policy guidelines.<sup>10/</sup> Under the policy guidelines, the competitiveness of the import arrangements in the markets served is the primary consideration for meeting the public interest test, and, under long-term import proposals, need for the gas and security of the supply are also important considerations.

The DOE finds that the proposed amended import arrangement is competitive. The Phase II contract is flexible with respect to both volume and price and has assured a competitive gas supply for the Repurchasers. The Phase II amendment does not change the overall pricing structure of the Phase II contract but makes it even more market sensitive by eliminating the producers' fixed costs from the demand charge and by more accurately reflecting Boundary's allocable share of NOVA's monthly cost of service.

Under the DOE policy guidelines, need is viewed as a function of

competitiveness and gas is presumed to be needed if it is found to be competitive in the proposed markets. Since we have found the Phase II contract, as amended, to be competitive, the presumption of need is applicable.

Regarding security of supply, Canada has historically been a reliable source of gas supply to the United States. Moreover, the Phase II amendment contains a revised gas supply provision which provides Boundary with specific assurances regarding deliverability of the gas over the term of the contract, including the commitment by TransCanada to indemnify Boundary for increased costs incurred as a result of a deliverability shortfall. Also, TransCanada estimates that it currently has under contract deliverable reserves in excess of 24 Tcf of natural gas and that potential reserves from Canada are 191 Tcf. Finally, although the proposed amendment would extend the term of Boundary's authorization, the total term volume of Boundary's proposed imports, including the Phase I deliveries as well as the proposed extension, would only be 552.716 Bcf, which is less than the 675.25 Bcf authorized in Order 45.

After taking into consideration all the information in the record of this proceeding, I find that granting Boundary amended authorization to import up to 92,500 Mcf per day through January 15, 2003, is not inconsistent with the public interest. We note that five of Boundary's customers have filed in support of the application to amend and that no party has objected to the proposed amendment.

Subsequent to the issuance of Order 45, the DOE has, in its import authorization orders, required authorization holders to file quarterly reports containing pertinent information regarding their imports. Boundary has, through an informal, voluntary arrangement, submitted to the DOE information regarding its imports. DOE will use this opportunity to formalize that arrangement and impose reporting requirements.

#### ORDER

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

A. DOE/ERA Opinion and Order No. 45 (Order 45) issued August 9, 1982, to Boundary Gas, Inc. (Boundary), is hereby amended to allow Boundary to import up to 92,500 Mcf per day of natural gas until January 15, 2003, pursuant to the terms of the amended Phase II gas purchase agreement as discussed in this order.

B. With respect to imports authorized by this Order, the Repurchasers, either jointly or separately, shall file with the Office of Fuels Programs (OFP) of the Department of Energy within 30 days following each calendar quarter, quarterly reports indicating, by month, the quantities of gas in Mcf

imported by each Repurchaser under Ordering Paragraph A above, and the average price per Repurchaser, showing the demand/commodity charge breakdown on a monthly, per unit (MMBtu) basis paid for those volumes at the international border.

C. The motions to intervene, as set forth in this Opinion and Order, are hereby granted, provided that participation of such intervenors shall be limited to matters specifically set forth in their motions to intervene and not specifically denied, and that the admission of such intervenors shall not be construed as recognition that they might be aggrieved because of any order issued in this proceeding.

Issued in Washington, D.C., on December 8, 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, Office of Fossil Energy (FE). DOE Delegation Order No. 0204-127 specifies the transferred functions (54 FR 11436, March 20, 1989).

2/ 1 ERA Para. 70,539.

3/ 26 FERC Para. 61,114.

4/ 1 ERA Para. 70,560 (February 8, 1984).

5/ 40 FERC Para. 61,088.

6/ 1 FE Para. 70,244 (October 10, 1989).

7/ 49 FR 6684, February 22, 1984.

8/ 54 FR 41868, October 12, 1989.

9/ 15 U.S.C. Sec. 717b.

10/ 49 FR 6684, February 22, 1984.