

Cited as "1 FE Para. 70,274"

Wisconsin Public Service Corporation (FE Docket No. 89-10-NG), December 8, 1989.

DOE/FE Opinion and Order No. 359

Order Granting Long-Term Authorization to Import Natural Gas from Canada and Granting Intervention

### I. Background

On February 14, 1989, Wisconsin Public Service Corporation (WPSC) 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 for authorization to import up to 8,060 Mcf per day of Canadian natural gas on a firm basis and up to 11,820 Mcf per day of additional interruptible supplies for a term commencing on the date the authorization is granted through October 31, 1992. WPSC intends to use the imported gas for system supply and states that no new pipeline facilities would be utilized for this import.

The import volumes would enter the U.S. at a point near Emerson, Manitoba, through existing pipeline facilities owned and operated by Midwestern Gas Transmission Company (Midwestern). Midwestern would transport the gas to an interconnection with the facilities of ANR Pipeline Company (ANR) at Marshfield, Wisconsin, and ANR would deliver the gas to WPSC's distribution system.

WPSC furnished with its application a precedent agreement and gas purchase contract dated August 1, 1988. Under the terms of the contract, TransCanada PipeLines, Limited (TransCanada), will supply WPSC up to 8,060 Mcf per day on a firm basis. The contract also gives WPSC the right to purchase additional interruptible supplies that may become available and offered by TransCanada from time to time. According to the application, there is no take-or-pay provision in the proposed gas purchase arrangement. The contract provides that if, during any contract year, the volumes purchased by WPSC fall below 60 percent of the aggregate of the maximum daily quantities, then TransCanada may elect in the succeeding year to reduce the daily contract quantity of 8,060 Mcf.

The gas purchase contract established a two-part rate structure consisting of a monthly demand charge and a monthly commodity charge. The demand charge would equal the product of the daily contract quantity in effect during such month times the sum of the toll charges of TransCanada and Nova Corporation of Alberta for transportation of the gas in Canada. The commodity charge for each MMBtu of firm supplies at 100 percent load factor to be paid

through April 30, 1990, is based upon a formula that reflects the price of spot market gas delivered into ANR's gas transmission system at Custer County, Oklahoma. For example, the price at the border of the import under this rate formula would be \$1.48 per MMBtu for August 1989. From April 30, 1990, through October 31, 1992, the commodity charge is based on a formula that reflects a combination of the prices paid to TransCanada for gas sold to ANR, Midwestern, and Michigan Consolidated Gas Company (MichCon). For each MMBtu of interruptible supplies, the commodity charge paid by WPSC over the term of the agreement will be based upon the same formula in effect for firm volumes delivered prior to and through April 30, 1990. The agreement also provides that the parties may negotiate modification of the commodity charge for interruptible supplies.

WPSC asserted that the TransCanada volumes are needed to meet its system requirements and that the import arrangement will be competitive over the term. In addition, WPSC submits that TransCanada has a record of providing reliable gas supplies.

## II. Interventions and Comments

A notice of application was issued on March 31, 1989, inviting protests, motions to intervene, notices of intervention, and comments to be filed by May 8, 1989.<sup>1</sup> Motions to intervene without comments were filed by Western Gas Marketing Ltd. (WGM) and Midwestern. A motion to intervene with comments was filed by Tarpon Gas Marketing, Ltd., (Tarpon), protesting the application and requesting discovery and a trial-type hearing. Although Midwestern's motion was filed on June 5, 1989, it is accepted and this order grants intervention to these movants.

Tarpon, a Canadian gas marketer in competition with TransCanada, argued that Wisconsin's application should be rejected (1) because the presumption that the arrangement is freely negotiated and competitive, consistent with the policy guidelines, has been rebutted, and (2) because the arrangement is anticompetitive with "all the attributes of a tying arrangement" and in other ways prohibited by the antitrust laws and therefore contrary to the public interest.

On May 23, 1989, WPSC and WGM answered Tarpon's protest stating it mischaracterized the standards by which an import application should be determined. On June 7, 1989, Tarpon filed a motion to lodge its D.C. Circuit Court brief and answer Midwestern's intervention. Tarpon asserted Western's and Midwestern's comments constitute an admission that material facts are in dispute and that "fundamental fairness" required DOE to consider briefs of both sides. Tarpon, on this same day, served Wisconsin, Midwestern and Western with identical, initial data requests. By letter dated July 7, 1989, Wisconsin declined to respond to Tarpon's data request because (1) the requests are

inappropriate where no basis exists for evidentiary hearing; and (2) that the data is not relevant to DOE proceeding.

On August 30, 1989, Tarpon filed a motion to withdraw its opposition to WPSC's application. Tarpon stated that its motion to withdraw was in return for an agreement by Viking Gas Transmission Company (formerly Midwestern) to expedite the processing and filing of a new section 7(c) certificate application with the Federal Energy Regulatory Commission (FERC) to provide interruptible transportation of gas for Tarpon. Viking's application was filed on August 25, 1989, in FERC Docket No. CP89-1999-000.

### III. Decision

The application filed by WPSC has been evaluated to determine if the proposed import arrangement meets the public interest requirements of section 3 of the NGA. Under section 3, imports must be authorized unless there is a finding that they "will not be consistent with the public interest." 2/ This determination is guided by the DOE's natural gas import policy guidelines.<sup>3/</sup> Under these guidelines, 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 arrangement such as this, need for the gas and security of supply are also important considerations.

The DOE guidelines state that the competitiveness of an import arrangement will be assessed by a consideration of the arrangement taken as a whole. WPSC's now uncontested import arrangement, as described in the application, is consistent with the DOE policy guidelines. WPSC freely negotiated a gas purchase agreement with terms that provide flexibility to the import arrangement and help ensure that it will be market responsive. Specifically, WPSC negotiated price terms for the proposed imports through April 31, 1990, that will result in delivered costs comparable to competing gas purchases. The delivered cost of the imported gas will be determined by reference to a relevant spot market price of gas, plus an amount to reflect the difference in transportation costs between the proposed Canadian imports and alternative domestic supplies of spot gas.

For the remainder of the term of the gas purchase contract (May 1, 1990 to October 31, 1992), the price of the gas will be determined by reference to alternative sources of gas supply for WPSC, including ANR's system supply of gas for resale. The contract provides that the price will be determined with reference to the price paid to TransCanada for competing gas by ANR, Midwestern and MichCon. In addition, the contract contains price renegotiation provisions designed to ensure that the imported gas will remain competitive with domestic natural gas and other fuels available in the markets served. Therefore, we find that the import arrangement is and will remain competitive over the term of the contract.

Further, need for the gas has been demonstrated. Under the policy guidelines, imported gas that is shown to be competitive is presumed to be needed. This presumption was not rebutted in this proceeding. Additionally, WPSC asserts in its application that the volumes for which they seek authorization are needed as an additional source for system supply and assured of utilization.

The security of the Canadian gas supplies is not disputed. The reliability of the proposed Canadian supplies is supported by provisions in the gas purchase contract that provide WPSC assurance of accessibility to producible gas from the dedicated reserves of TransCanada's producer-suppliers. Accordingly, the DOE finds that this import will not lead to any undue dependence on an unreliable source of supply nor otherwise comprise the energy security of the nation over the term of the proposed import.

After taking into consideration all of the information in the record of this proceeding, I find that granting WPSC authority to import up to 8,060 Mcf per day of Canadian natural gas on a firm basis and up to 11,820 Mcf per day of additional supplies on an interruptible basis for a term commencing on the date that this authorization is granted through October 31, 1992, is not inconsistent with the public interest.

#### ORDER

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

A. Wisconsin Public Service Corporation (WPSC) is authorized to import up to 8,060 Mcf per day of Canadian natural gas on a firm basis and up to 11,820 Mcf per day of additional interruptible supplies for a term commencing on the date this authorization is issued through October 31, 1992, in accordance with the provisions of its gas purchase agreement with TransCanada PipeLines, Limited, as described in the application in this proceeding and discussed in this Opinion and Order.

B. Within two weeks after deliveries begin, WPSC shall notify the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, 1000 Independence Avenue, S.W., Washington, D.C., 20585, in writing of the date that the first import authorized in Ordering Paragraph A above occurs.

C. With respect to the imports authorized by this Order, WPSC shall file with the Office of Fuels Programs, within 30 days following each calendar quarter, quarterly reports indicating whether sales of imported gas have been made, and if so, giving, by month, and by contract, the total volume of the imports in Mcf and the average purchase price per MMBtu at the international

border. The reports shall also provide for each month in which this occurs the details of each import transaction, involving interruptible sales of overrun gas, including price per MMBtu volumes, duration of the agreement(s), points of entry, and, if applicable, the per unit (MMBtu) demand/commodity charge breakdown of the price, and any special contract price adjustment clauses.

D. 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 to intervene and not herein specifically denied, and that admission of these 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 December 8, 1989.

--Footnotes--

1/ 54 FR 14135, April 7, 1989.

2/ 15 U.S.C. 717b.

3/ 49 FR 6684, February 22, 1984.