

Cited as "1 FE Para. 70,300"

Vermont Gas Systems, Inc. (FE Docket No. 89-68-NG), February 7, 1990.

DOE/FE Opinion and Order No. 382

Order Amending Authorization to Import Natural Gas from Canada, Revoking Emergency Interim Authorization, and Granting Intervention

I. Background

On October 4, 1989, Vermont Gas Systems, Inc. (Vermont Gas), 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) 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 amendment. 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 was reached in order to assure that there continued to be sufficient gas supplies to meet the expected winter heating season requirements of its customers. On October 26, 1990, the FE issued DOE/FE Opinion and Order No. 344 (Order 344) granting Vermont Gas emergency interim authorization to import the requested additional volumes.^{1/}

Vermont Gas is a local distribution company that is incorporated under the laws of the State of Vermont and provides natural gas service to residential, commercial and industrial customers. Vermont Gas receives its total supply of natural gas from TransCanada Pipe Lines, Ltd. (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 (Order 143),^{2/} 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, absent the issuance of

Order 344, Vermont Gas' authorized import quantity would have reverted to 25,600 Mcf per day in accordance with DOE Opinion and Order No. 39 (Order 39).³/ Order No. 39 expires October 31, 1991.

On May 1, 1989, Vermont Gas entered into a letter of agreement (May 1 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 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 (September 29 agreement), 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. Vermont Gas indicated that 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 is needed to meet its firm market requirements.

A notice of Vermont Gas' application and of the issuance of Order 344 was issued on October 26, 1984, inviting protests, motions to intervene, notices of intervention, and comments to be filed by December 4, 1989.^{4/} WGML filed a motion to intervene in support of the application on December 4, 1989. This order grants intervention to WGML.

II. Decision

The application filed by Vermont Gas has been evaluated to determine if the proposed 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."^{5/} This determination is guided by the DOE's natural gas import guidelines.^{6/} Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test.

Vermont Gas seeks to extend its existing import authority for one year and maintain the current volume of 32,000 Mcf per day. The reasons for the approval of the Vermont Gas/TransCanada import arrangement in Orders 39 and 143 have not changed. The pricing and other provisions of the 1985 contract, as amended by the September 29 agreement, will continue to ensure Vermont Gas a competitively priced, needed, and secure supply of natural gas for the length of the contract. Further, no party opposed Vermont Gas's amended authorization request.

After taking into consideration all the information in the record of this proceeding, I find that the amended authorization requested by Vermont Gas is not inconsistent with the public interest and should be granted.

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 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 the 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, Ltd., as amended by the September 29, 1989, letter agreement between Vermont Gas and Western Gas Marketing Limited.

C. With respect to the imports authorized by this Opinion and Order, Vermont Gas shall file with the Office of Fuels Programs within 30 days following each calendar quarter, quarterly reports showing by month, the quantities of natural gas in Mcf imported under this authorization, and the average price per MMBtu paid for these volumes at the international border. The price information shall include a demand-commodity charge breakdown on a monthly and per unit (MMBtu) basis.

D. The emergency interim authorization granted to Vermont Gas in DOE/FE Opinion and Order No. 344 is hereby revoked.

E. The motion to intervene, as set forth in this Opinion and Order is hereby granted, provided that participation of such intervenor shall be limited to matters specifically set forth in its motion to intervene and not specifically denied, and that the admission of such intervenor shall not be construed as recognition that it might be aggrieved because of any order issued in the proceeding.

Issued in Washington, D.C., on February 7, 1990.

--Footnotes--

1/ 1 FE Para. 70,263.

2/ 1 ERA Para. 70,666 (September 5, 1986).

3/ 1 ERA Para. 70,544 (March 1, 1982).

4/ 54 FR 46285, November 2, 1989.

5/ U.S.C. Sec. 7176.

6/ 49 FR 6684, February 22, 1984.

