Cited as "1 FE Para. 70,316"

Northwest Natural Gas Company (FE Docket No. 90-02-NG), May 18, 1990.

DOE/FE Opinion and Order No. 393

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

I. Background

On January 10, 1990, Northwest Natural Gas Company (Northwest Natural) 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), for authorization to import up to 100 MMcf per day of natural gas from Canada through November 1, 2003. Northwest Natural proposes to import up to 92 MMcf per day from British Columbia Petroleum Corporation (BCPC) and up to 8 MMcf per day from Westcoast Energy Marketing, Ltd. (Westcoast Marketing). The proposed transactions would not require the addition or expansion of pipeline or other distribution facilities.

Northwest Natural is a local distribution company that provides natural gas sales and distribution services to approximately 300,000 residential, commercial, and industrial customers in Oregon and Washington.

Before October 1, 1988, Northwest Natural purchased the majority of its gas supplies from Northwest Pipeline Corporation (NPC). On June 10, 1988, NPC filed a notice of acceptance of an open access transportation certificate under the terms of the Federal Energy Regulatory Commission's (FERC) Orders 436/500 program. NPC's acceptance gave Northwest Natural an opportunity for a one-time conversion of up to 100 percent of their firm contract demand (CD) on NPC from sales to transportation service. NPC required a percentage split of the converted CD between Canadian and domestic sources of supply.

Northwest Natural states it converted about 98 percent of its CD on NPC from sales to transportation service effective October 1, 1988. Fifty-eight percent of the converted CD capacity was allocated at Sumas, Washington, for Canadian gas supplies. Because of the short time-frame available in which to respond to the conversion option and to negotiate replacement supplies, Northwest Natural contracted to purchase Canadian gas supplies imported by Westcoast Resources, Inc., (Westcoast Resources) under its blanket import authorization granted in DOE/ERA Opinion and Order No. 223 (Order 223) issued February 3, 1988. The contract is a month-to-month agreement that can be terminated by either party on fifteen days notice.

In order to prevent curtailment of its customers because of a potential interim loss of its imported supply, Northwest Natural requested that the DOE issue a final or interim order in this docket effective February 5, 1990, or, in the alternative, approve Westcoast Resources' application filed in FE Docket No. 89-74-NG (55 FR 352, January 4, 1990) to renew its blanket import authority scheduled to expire February 5, 1990.1/

Northwest Natural seeks long-term authority in this proceeding to import up to 92 MMcf per day of natural gas purchased under a gas sales agreement with BCPC dated January 1, 1989. In addition, Northwest Natural asks for import authority for up to 8 MMcf per day of natural gas on a firm basis purchased under a gas sales agreement with Westcoast Energy Marketing, Ltd., (WEML) dated April 10, 1989. WEML is a wholly-owned subsidiary of Westcoast Energy, Inc., (Westcoast), the pipeline transporter. Both contracts expire on November 1, 2003. The gas would be transported over the same pipeline facilities previously utilized by NPC to import gas on behalf of Northwest Natural, and would enter the U.S. at Sumas, Washington.

The volumetric, pricing, and renegotiation provisions of the BCPC and WEML contracts are substantially the same. Northwest Natural is obligated to purchase a minimum annual volume of gas that cannot be less than 53 percent of the contract demand under each contract. After taking the minimum annual volume for a contract year, the deficiency volumes paid for but not taken in any of the immediately preceding five contract years can be made up as long as the daily volume does not exceed the contract demand. Storage injection gas purchased at the system supply rate is credited against the minimum annual volume.

Under the pricing provisions of both the BCPC and WEML contracts, Northwest Natural would pay monthly charges based on NEB-approved tolls for transportation services on Westcoast's pipeline facilities, plus a commodity charge for volumes actually purchased. Specifically, the BCPC price is comprised of: (1) the Westcoast demand toll (Northwest Natural's proportionate share of the total demand tolls payable by BCPC to Westcoast under all firm service agreements based on BCPC's mix of supplies incorporated in BCPC's firm Westcoast service agreements) minus Northwest Natural's share of any interruptible credits which Westcoast applies to the aforementioned firm service agreements; (2) the commodity tolls payable by BCPC to Westcoast for the transportation of British Columbia-sourced gas delivered at the Huntington, British Columbia, delivery point as determined in accordance with Westcoast's toll methodology and schedules; and (3) a commodity charge which is fixed on an annual basis. The current charge is $1.35 per MMBtu (U.S.) for gas purchased in each contract year as system supply gas and $0.90 per MMBtu (U.S.) for gas purchased during the period commencing May 1, and ending on October 31, of each contract year, for injection into Northwest Natural's storage facilities. If BCPC is unable, for reasons other than force majeure, to deliver gas up to the contract demand requested by Northwest Natural, a credit equal to the daily demand charge (the monthly demand charge multiplied by twelve, divided by the number of days in the year) times the difference, would be applied to Northwest Natural's monthly bill.

The similar pricing provisions of the WEML contract are comprised of: (1) a monthly demand toll equal to the aggregate of the Westcoast demand toll, as described above, and the off-system demand toll (Northwest Natural's share of the Westcoast Transmission Company (Alberta) Ltd. (Westcoast Alberta) export cost of service, the fixed cost of service for each applicable toll zone of Westcoast Alberta's pipeline facilities allocable to the transportation of gas sold and delivered by Westcoast Alberta to Northwest Marketing and to Westcoast for resale by Westcoast Marketing and by Westcoast on a firm basis at the Huntington delivery point); (2) a commodity toll equal to the sum of Westcoast Alberta's commodity toll for each applicable toll zone for gas sold by Westcoast Alberta to Northwest Natural and the total of the commodity tolls approved by the NEB and payable each month by Westcoast Marketing to Westcoast in accordance with firm service agreements; and (3) a commodity charge identical to that provided for by the BCPC contract. Similarly, if Westcoast Marketing is unable, for reasons other than force majeure, to deliver gas requested by Northwest Natural up to the contract demand, a credit equal to the daily demand charge times the difference would be applied to Northwest Natural's monthly bill.

Either party to both contracts may initiate renegotiation of the commodity price for system supply gas by giving written notice to the other party on or before August 1, each year during the term of the agreement. If the parties are unable to agree on a new price in the renegotiation process, the contracts require that the dispute be submitted to binding arbitration under guidelines that reflect market principles. Renegotiation of the commodity price for storage injection gas requires notice on or before February 1, each year. Storage price negotiations are not subject to arbitration.

Both contracts also provide an opportunity for renegotiation of other contractual provisions, except CD, if unforeseen events, such as market changes or governmental action, materially change the viability of the contracts to the detriment of a party. Failing renegotiation, these matters are subject to arbitration.

Northwest Natural states that the contracts with BCPC and WEML were negotiated at arms-length, and because the contracts permit annual renegotiation of the gas commodity prices, the pricing provisions for these contracts are flexible and market-responsive. Northwest Natural notes that the company's high load factor made possible by substantial storage capacity, steady winter takes, large market block and other factors were an advantage when it negotiated these contracts and demonstrate the competitiveness of the import.

Northwest Natural states that the suppliers under the BCPC and WEML contracts have access to substantial reserves that are more than adequate to supply Northwest Natural over the terms of the import. BCPC aggregates and markets natural gas from the supplies of about 140 different producers in British Columbia. WEML has contractual rights to the aggregated supplies of producers in Alberta and the Northwest Territories. Northwest Natural further maintains that there is a historical relationship between it and these suppliers. It utilized their supplies indirectly through the NPC system and, over the last year and a half, has had a direct contractual relationship with these suppliers that confirms a high reliability level with greater sensitivity to market prices.

Northwest Natural additionally asserts that the natural gas imports pursuant to the BCPC and WEML contracts comprise nearly half of its winter system supply gas and over half of the company's summer purchases and maintains that these natural gas imports will be needed over the requested import term.

A notice of this application was issued on February 15, 1990, inviting protests, motions to intervene, notices of intervention, and comments to be filed by March 26, 1990.2/ A motion to intervene without substantive comment or request for additional procedures was filed by NPC. Additionally, a motion to intervene in support of the application was filed by Westcoast Marketing. This order grants intervention to these movants.

II. Decision

The application filed by Northwest Natural 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." 3/ This determination is guided by the DOE's natural gas import policy guidelines.4/ 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 arrangements such as this, need for the gas supply 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 whole fabric of the arrangement. They contemplate that the contract arrangements should be sufficiently flexible to permit pricing and volume adjustments as required by market conditions and availability of competing fuels, including domestic natural gas. Northwest Natural's import proposal, as set forth in its application is consistent with the DOE policy guidelines.

Northwest Natural has freely negotiated gas purchase agreements with terms that provide flexibility to the import arrangements, helping ensure that they will be market responsive over the term of the contracts. Although Northwest Natural is obligated to purchase a minimum of 53 percent of the contract demand under each contract, any deficiency volumes paid for but not taken in any of the immediately proceeding five contract years can be made up as long as daily volumes do not exceed contract demand.

Under both contracts either party may initiate renegotiation of the commodity price for system supply gas. If the parties are unable to agree on a new price, the contracts require that the dispute be submitted to binding arbitration under guidelines that reflect market principles. Both contracts also provide for renegotiation of other contractual provisions, except CD, if unforeseen events, such as market changes or governmental action, materially change the viability of the contract to the detriment of a party. Failing renegotiation, these matters are subject to arbitration.

For the reasons, and on the basis of the provisions, described above, the DOE finds the arrangement sufficiently flexible as a whole to be competitive over the requested import term. 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. Further, need for the imported gas for system supply has been demonstrated.

The security of the Canadian gas supplies is not disputed. The reliability of the proposed Canadian supplies is supported by Northwest Natural's attestation that the suppliers under the BCPC and WEML contracts have access to substantial reserves that are more than adequate to supply it over the term of the import. Accordingly, the DOE finds that this import will not lead to any undue dependence on an unreliable source of supply nor otherwise compromise the 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 Northwest Natural authority to import up to 100 MMcf per day of natural gas from Canada commencing on the date of the issuance of this order through November 1, 2003, 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. Northwest Natural Gas Company (Northwest Natural) is authorized to import up to 92 MMcf of natural gas per day from British Columbia Petroleum Corporation (BCPC) through November 1, 2003, in accordance with the provisions of a gas sales agreement with BCPC as described in the application discussed in this Opinion and Order.

B. Northwest Natural is authorized to import up to 8 MMcf of natural gas per day from Westcoast Energy Marketing, Ltd. (Westcoast Marketing) through November 1, 2003, in accordance with the provisions of a gas sales agreement with Westcoast Marketing as described in the application discussed in this Opinion and Order.

C. With respect to the imports authorized by this Order, Northwest Natural shall file with the Office of Fuels Programs, within 30 days following each calendar quarter, quarterly reports showing by month, and by contract, the total volume of natural gas imports in Mcf and the average purchase price per MMBtu at the international border. The monthly price information shall include a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis.

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 the 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. May 18, 1990.

--Footnotes--

1/ On February 1, 1990, FE issued DOE/FE Opinion and Order No. 376 to Westcoast Resources, authorizing the continued importation of natural gas from Canada on an emergency interim basis granted in DOE/ERA Opinion and Order 223, until the comment period in FE Docket No. 89-74-NG closed and a decision could be made on the application. On March 2, 1990, FE issued DOE/FE Opinion and Order No. 376-A to Westcoast Resources authorizing it to import up to 300 Bcf of natural gas from Canada during a two-year period beginning on the date of the issuance of that order and revoking the emergency interim order.

2/ 55 FR 6306, February 22, 1990.

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

4/ 49 FR 6684, February 22, 1984.