Cited as "1 FE Para. 70,364"

Inter-City Minnesota Pipelines Ltd., Inc., Northern Minnesota Utilities, ICG Utilities (Ontario) Ltd. (FE Docket No. 90-16-NG), October 16, 1990.

DOE/FE Opinion and Order No. 438

Order Granting Authorizations to Import and Export Natural Gas from and to Canada, Vacating Authorization to Import and Export Natural Gas from and to Canada, and Granting Intervention

I. Background

On March 13, 1990, Inter-City Minnesota Pipelines Ltd., Inc. (Minnesota Pipelines), Northern Minnesota Utilities (NMU), and ICG Utilities (Ontario) Ltd. (ICG Utilities) filed a joint 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 have the import and export authorization held by Minnesota Pipelines reassigned to NMU and ICG Utilities. The application was supplemented on April 19, 1990, amended on May 18 and June 13, 1990, and further supplemented on July 3, August 21, and August 24, 1990.

Minnesota Pipelines proposes to "unbundle" its current gas sales arrangements to NMU and ICG Utilities and in the process would terminate its gas purchase contracts with its Canadian supplier, ICG Transmission Holdings Limited (ICG Transmission), relative to the NMU and ICG Utilities gas. Minnesota Pipelines intends to become solely a transporter rather than a purchaser and reseller of gas. NMU and ICG Utilities would each buy gas directly from Canadian suppliers with Minnesota Pipelines transporting this gas. An essential part of the unbundling is the applicants' request in this proceeding that the authorization to import and expert gas from and to Canada held by Minnesota Pipelines for gas resold to NMU and ICG Utilities be reassigned to the former sales customers. Approval of this application would involve no modification or construction of pipeline facilities.

A. The Existing Import Arrangement

Minnesota Pipelines is the United States portion of a single pipeline that operates between points in Canada and points in the U.S., weaving in and out of northern Minnesota. The Canadian portion is ICG Transmission. The integrated pipeline begins at an interconnection with TransCanada PipeLines Limited (TransCanada) near Spruce, Manitoba, and extends to the international

border near Sprague, Manitoba. From this point, it travels east through northern Minnesota to Baudette, Minnesota, where the pipeline reenters Canada. It then crosses back into the U.S. at International Falls, Minnesota, where it terminates. The U.S. portion of this pipeline runs for about 52 miles.

Both Minnesota Pipelines and its Canadian counterpart, ICG Transmission, are subsidiaries of Westcoast Energy, Inc. (Westcoast). ICG Utilities is a Canadian natural gas distribution utility. It is also a subsidiary of Westcoast. ICG Utilities manages and operates both ICG Transmission and Minnesota Pipelines. NMU is an operating division of Utilicorp United, Inc., which supplies gas utility service to 44 towns in Minnesota.

Minnesota Pipelines imports its entire gas supply from ICG Transmission which, in turn, buys from TransCanada. Minnesota Pipelines' services are limited to transporting for ICG Transmission gas that is sold to ICG Utilities solely for consumption in Canada, and to sales within Minnesota to two customers, NMU and the City of Warroad. Minnesota Pipelines is currently authorized to import up to 14,602 MMcf of firm supplies of natural gas annually from ICG Transmission. A portion of this gas is delivered to both NMU and Warroad (up to 200 MMcf per year each) off the first leg of the pipeline for sale in western Minnesota. The balance of the gas (up to 14,202 MMcf per year) continues through the pipeline and is then exported to Ontario at Baudette. In Ontario, some of this gas is sold by ICG Transmission to ICG Utilities (up to 5,502 MMcf annually). The remaining volumes (up to 8,700 MMcf per year) are imported by Minnesota Pipelines a second time into the U.S. near International Falls, where they are sold to NMU. Minnesota Pipelines' import/export authority expires October 31, 1995.1/

B. The Application

According to the application, Minnesota Pipelines, ICG Transmission, and their sales customers have reached agreements under which the pipelines would cease to be purchasers and resellers of gas and would become solely transporters, leaving ICG Utilities, NMU and Warroad free to negotiate directly and independently for the purchase of gas from Canadian suppliers. It is noteworthy that these customers have been negotiating their own pricing terms with TransCanada which Minnesota Pipelines and ICG Transmission have incorporated into their current gas purchase contracts. Converting to the new service arrangements is premised on NMU, ICG Utilities, and Warroad importing and exporting the gas themselves. NMU and ICG Utilities would import and export gas from and to Canada under the authority requested in this application beginning on the date when Minnesota Pipelines and ICG Transmission obtain all regulatory authorizations acceptable to the parties to

implement their proposed new service arrangements.2/

1. ICG Utilities

ICG Utilities requests authorization until November 1, 1990, to import at Sprague and subsequently export at Baudette, up to 5,502 MMcf annually for exclusive use in Canada. The gas would be imported and exported solely as part of a transportation arrangement, and would not be sold or stored in the U.S.

2. NMU

NMU requests authorization to import through October 31, 2002, up to 11,445 MMcf annually of firm supplies at Sprague, up to 560 MMcf of this volume for sale annually in western Minnesota, then authorization to export back to Canada at Baudette, and reimport at International Falls the remaining 10,885 MMcf annually. Further, NMU proposes to import, export, and reimport additional interruptible volumes of up to 33.2 MMcf annually.

The application, as amended, includes two contracts under which NMU would purchase gas from Western Gas Marketing Limited (WGML), the marketing affiliate of TransCanada. One is a proposed contract titled the "Direct Sale Contract" that is part of a precedent agreement dated December 14, 1989, in which both parties agree to execute the Direct Sale Contract when the new transportation service arrangement is approved. It covers the period from the time of the unbundling through October 31, 1991. The second, titled the "Gas Sales Contract", was signed June 15, 1990, and would succeed the Direct Sale Contract, becoming effective on November 1, 1991, and extending through October 31, 2002. Both contracts give NMU the right to purchase on an interruptible basis volumes of "overrun" gas, i.e., volumes which WGML has available to sell to NMU in excess of daily contract quantities. The price of overrun gas on any day would be negotiated by NMU and WGML.

The following summarizes the principal provisions in NMU's two purchase agreements with WGML.

a. Direct Sale Contract

The proposed Direct Sale Contract provides for the delivery and sale to NMU of 21,063 Mcf of gas per day during the period before November 1, 1990, and 26,358 Mcf per day thereafter. It has identical pricing provisions to those presently in effect under Minnesota Pipelines' gas purchase agreement with ICG Transmission for sales to NMU. Under this contract, title to the gas would pass from WGML to NMU at the point where the pipeline facilities of

TransCanada interconnect with ICG Transmission near Spruce, Manitoba. NMU must bear separately the cost for pipeline transportation by ICG Transmission from Spruce to the international border. The price NMU would pay WGML is comprised of a two-part, demand and commodity charge. The monthly demand charge would be equal to the sum of the demand tolls of TransCanada and Nova Corporation of Alberta (Nova) for their transportation of the gas in Canada. The contract provides for different commodity charges depending on the market involved. The initial commodity charge for gas resold to Boise Cascade Corporation (Boise Cascade), NMU's largest single customer and the operator of a paper mill with facilities in both International Falls and in the adjoining Canadian city of Fort Francis, would be $1.60 (U.S.) per MMBtu. The commodity charge for the balance of the gas, excluding overrun gas, would be $1.99 (U.S.) per MMBtu for volumes consumed in western Minnesota and $1.81 (U.S.) per MMBtu for eastern Minnesota volumes.

Minnesota Pipelines' supplemental filing of April 19, 1990, indicated that the two-part rate in the Direct Sale Contract would have resulted in a border price to NMU on April 3, 1990, of $2.39 (U.S.) per MMBtu for gas destined to be consumed by Boise Cascade. The remainder of NMU's imports for resale in western and eastern Minnesota would have been $2.76 (U.S.) and $2.73 (U.S.) per MMBtu, respectively.

There is no minimum take or minimum commodity bill in the Direct Sale Contract, but the total monthly demand charges in the demand component of the two-part rate applicable to the imported gas must be paid regardless of the level of takes. There are price renegotiation and arbitration provisions. However, they would be inoperative in light of the Gas Sales Contract which takes effect November 1, 1991.

b. Gas Sales Contract

The Gas Sales Contract of June 15, 1990, contains provisions similar to those in the Direct Sale Contract described above. The daily contract quantity beginning November 1, 1991, would be 26,358 Mcf of which 20,000 Mcf is Boise Cascade gas. When WGML obtains an additional 5,000 Mcf per day of transportation capacity on TransCanada, the daily volumes would increase to 31,358 Mcf, of which 25,000 Mcf per day is for Boise Cascade. As in the first contract, the price to be paid by NMU for firm gas under the Gas Sales Contract is computed using a two-part rate that would include the monthly demand charges billed by TransCanada and Nova for deliveries to Spruce, Manitoba, and a market differentiated commodity charge. Like the Direct Sale Contract, this contract imposes a minimum bill equal to the total demand charges that NMU would pay regardless of the level of takes. The price of

overrun gas would be negotiated monthly by NMU and WGML.

(1) Boise Cascade Volumes

The commodity charge for gas to be resold to Boise Cascade consists of (1) a base price adjusted each year calculated by multiplying an initial base price at the Alberta border of $1.75 (CN) per Gigajoule (GJ) (one GJ equates to approximately one MMBtu or one Mcf) by a fraction that reflects the price being paid for gas by all of WGML's long-term firm customers at the Alberta border; and (2) the TransCanada commodity transportation toll plus fuel costs from Empress to Spruce, Manitoba. These volumes are subject to a 60 percent minimum annual take provision. NMU must pay a gas inventory charge of $0.45 (CN) per GJ levied on the volumes not taken below the minimum quantity. If NMU fails to take the minimum volume over the succeeding two contract years, taking into account any overrun volumes, WGML would have the right to permanently reduce the daily quantity of gas it is obligated to supply up to the amount of the shortfall.

The Gas Sales Contract contains a provision that permits renegotiation of the Boise Cascade pricing terms every three years, and absent agreement during the renegotiation process, arbitration. Renegotiation would be focused on determining a price that is competitive with and comparable to (1) the prices being paid by purchasers under long-term firm contracts in other North American gas markets for gas supplied from Alberta; (2) the price for long-term firm supplies of gas available to Boise Cascade for delivery to its International Falls facility; and (3) the prices of alternate energy sources other than wood waste and/or coal that compete with gas for end-use at the Boise Cascade facility at International Falls.

NMU's supplemental filings of August 21 and 24, 1990, indicate that if the gas were now flowing under the terms of the Gas Sales Contract, the demand and commodity charges paid for deliveries at the international border for resale to Boise Cascade would be about $0.44 (U.S.) and $1.70 (U.S.) per Mcf, respectively. Combining the two charges would result in a total border price at 100 percent load factor of $2.14 (U.S.) per Mcf.

(2) Western and Eastern Minnesota Volumes

The initial price for gas resold to communities in western and eastern Minnesota has not yet been determined. The Gas Sale Contract prescribes that NMU and WGML will begin negotiations by June 1, 1991, to establish the commodity rates paid in the first contract year. The price provisions regarding these volumes are subject to annual renegotiation, and failing

agreement, arbitration. Pricing considerations for western and eastern Minnesota gas would be essentially the same as for the Boise Cascade volumes. The objective is to arrive at prices that are competitive with and comparable to (1) the prices being paid by purchasers under long-term firm contracts in other North American gas markets for gas supplied from Alberta; (2) the price for long-term firm supplies of gas that compete in the same markets as those served by WGML; and (3) the prices of alternate energy sources that compete with gas for end-use in the markets served by WGML.

II. Interventions

DOE published a notice of receipt of this joint application in the Federal Register on September 10, 1990, inviting protests, motions to intervene, notices of intervention, and comments to be filed by October 10, 1990.3/ WGML filed a motion to intervene supporting the application and urging its approval. This order grants intervention to WGML.

III. Decision

Although the applicants request that Minnesota Pipelines' import and export authority be reassigned, the terms of the unbundling arrangement differ significantly from the terms of the existing authorization and the total volumes would exceed those already authorized. DOE, therefore, is treating the filing as applications by NMU and ICG Utilities for new authority and an application by Minnesota Pipelines to have its present authority rescinded. Once the proposed unbundling process is complete, Minnesota Pipelines' authorization would no longer be necessary.

This joint application to enable NMU and ICG Utilities to import and export for themselves gas that they now acquire under an authorization granted to Minnesota Pipelines has been reviewed pursuant to section 3 of the NGA. Under section 3, an import or export must be authorized unless there is a finding that it will not be consistent with the public interest.4/ Decisions on applications for import authority are made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest.5/ Other matters that may be considered in making a public interest determination on gas import applications include need for the gas and security of the long-term supply. In reviewing natural gas export applications DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate in a particular case.

A. ICG Utilities

The import/export authority requested by ICG Utilities, involves Canadian gas which is only moving through and not being sold or stored inside the U.S. Since there would be no net import of gas, DOE believes that it is not necessary to consider in its evaluation competitiveness, need for the gas, or security of supply with respect to ICG Utilities proposed import, nor domestic need for the gas with respect to its proposed export. The only relevant issue in this proceeding bearing on the public interest would be the potential impact that the authorization may have on Minnesota Pipelines' other shippers.

It is DOE's opinion that ICG Utilities' uncontested proposal to import and export volumes of gas which Minnesota Pipelines was originally authorized and which ICG Utilities currently is receiving would not increase the rates of other shippers on Minnesota Pipelines or affect deliveries to U.S. consumers. Minnesota Pipelines appears to have sufficient capacity to provide the proposed firm transportation. Moreover, this gas sought to be imported and exported is required to enable ICG Utilities to meet its market demand in eastern Canada.

B. NMU

NMU's import/export proposal is subject to the review criteria ordinarily considered in connection with import applications. However, since the export would involve transportation but no sale of domestic gas in Canada, the DOE believes that the requirement to consider domestic need in the decision on the export portion of NMU's proposal is unnecessary.

NMU has freely negotiated gas purchase agreements with WGML to meet the particular requirements of the markets it serves with terms that permit price adjustments to ensure that the gas will remain competitive for the life of the contracts. As previously noted, the contracts allow renegotiation of the prices if market conditions change and arbitration to resolve any pricing disputes. Taken as a whole, DOE has determined that NMU's uncontested long-term proposal to import Canadian gas is consistent with the DOE policy guidelines.

Further, need for this 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.

The security of the Canadian gas supplies is not disputed. In light of WGML's record of fulfilling its supply commitments, DOE finds that NMU's import will not lead to any undue dependence on an unreliable source of supply

nor otherwise compromise the energy security of the nation over the term of the proposed import.

IV. Conclusion

After taking into consideration all of the information in the record of this proceeding, I find that the authorizations requested by NMU and ICG Utilities are not inconsistent with the public interest and should be approved.

ORDER

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

A. ICG Utilities (Ontario) Ltd. (ICG Utilities) is authorized to import from Canada into the United States at Sprague, Manitoba and subsequently export at Baudette, Minnesota up to 5,502 MMcf of natural gas annually through October 31, 1990, solely for consumption in Canada.

B. Northern Minnesota Utilities (NMU) is authorized the following through October 31, 2002, in accordance with the provisions of the two gas sales contracts of record in this proceeding as discussed herein:

(1) to import from Western Gas Marketing Limited (WGML) into the United States at Sprague, Manitoba up to 11,445 MMcf of firm supplies of Canadian natural gas per contract year (November 1 through October 31) (up to 560 MMcf per year to be sold in Minnesota prior to the export of the gas back to Canada), and to export to Canada at Baudette, Minnesota and reimport into the United States at International Falls, Minnesota up to 10,885 MMcf of this gas per contract year, for resale in eastern Minnesota; and

(2) to import, export, and reimport at the respective Sprague, Baudette, and International Falls delivery points additional interruptible volumes of up to 33.2 MMcf per contract year purchased from WGML for resale in Minnesota.

C. The authorizations granted herein to ICG Utilities and NMU shall become effective as of the date upon which regulatory approval required for the new transportation service arrangements is obtained from the Federal Energy Regulatory Commission (FERC) and accepted by the various parties ("effective date"). Minnesota Pipelines shall notify the Office of Fuels Programs, Fossil Energy, Room 3F056, FE-50, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in writing, of the receipt of the FERC approval acceptable to the parties within five days thereof.

D. The quantity of gas authorized in Ordering Paragraph A above for the contract year November 1, 1989, through October 31, 1990, shall be reduced by the quantity of Canadian gas Inter-City Minnesota Pipelines Ltd. (Minnesota Pipelines) has imported and exported on behalf of ICG Transmission Holdings Limited for resale to ICG Utilities during the period from November 1, 1989, to the "effective date" of ICG Utilities' import and export authorization.

E. Minnesota Pipeline's authority to import and export natural gas from and to Canada pursuant to the Federal Power Commission's authorization of August 10, 1970, in Docket No. CP70-289, as amended, most recently by the Economic Regulatory Administration in DOE/ERA Opinion and Order No. 52 issued October 4, 1983, is hereby vacated in its entirety on the "effective date" of the authorizations granted herein to ICG Utilities and NMU.

F. With respect to the imports and exports authorized in Ordering Paragraph B above, NMU 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 and exported under this authorization, and the average price per MMBtu paid at the international border for those volumes sold to customers in western and eastern Minnesota and the average price per MMBtu paid at the international border for those volumes sold to Boise Cascade Corporation. The price information shall include a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis.

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

Issued in Washington, D.C., October 16, 1990.

--Footnotes--

1/ The current import and export volumes were authorized by the Economic Regulatory Administration (ERA) in DOE/ERA Opinion and Order No. 52 issued October 4, 1983 (1 ERA Para. 70,555). This authority is the most recent in a series of orders issued by the Federal Power Commission (FPC), Federal Energy Regulatory Commission (FERC), and ERA related to Inter-City Minnesota's imports/exports. On October 1, 1977, the FPC ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the FERC. On January 6, 1989, the functions formerly vested in the ERA by the Secretary with respect to the regulation of imports and exports of natural

gas were transferred to FE. See FPC and FERC Orders in Docket No. CP70-289 issued August 10, 1970 (44 FPC 262), September 26, 1973, (50 FPC 869), July 16, 1975 (54 FPC 191, 391), December 17, 1976 (56 FPC 3681), April 30, 1979, (7 FERC Para. 61,155); see also DOE/ERA Opinion and Order Nos. 14 issued February 16, 1980 (1 ERA Para. 70,502), 14A issued April 23, 1980 (1 ERA Para. 70,507), 14B issued May 15, 1980 (1 ERA Para. 70,508), and 29 issued March 27, 1981 (1 ERA Para. 70,528).

2/ NMU intends to file with DOE a separate application for long-term authorization to import Canadian natural gas as agent on behalf of the City of Warroad. During the time the application is pending approval, NMU would supply Warroad under its existing blanket import authority which expires February 13, 1991 (DOE/ERA Opinion and Order No. 245, issued June 21, 1988).

3/ 55 FR 37262 (September 10, 1990).

4/ 15 U.S.C. Sec. 717b.

5/ 49 FR 6684, February 22, 1984.