

Cited as "1 FE Para. 70,393"

Northern Natural Gas Company (FE Docket No. 90-53-NG), December 20, 1990.

DOE/FE Opinion and Order No. 465

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

## I. Background

On May 30, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern) 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, for authorization to import up to 100,000 Mcf per day of natural gas from Canada beginning on the effective date of the requested authorization through October 31, 2001. The gas would be purchased from the Unigas Corporation (Unigas) under a gas sales contract dated November 1, 1989, and supplied to Northern on a firm basis via the import point near Monchy, Saskatchewan, for use as part of Northern's system supply. Transportation of the gas from the international border to Northern's pipeline system would be via the existing pipeline facilities of Northern Border Pipeline Company.

Northern is a natural gas company engaged in the transportation and sale of natural gas in interstate commerce with its principal office in Houston, Texas. Northern currently obtains natural gas supplies from domestic producers in Texas, Oklahoma, Kansas, and various other areas, and from various suppliers of Canadian gas. Northern serves gas markets in the States of Kansas, Nebraska, Iowa, South Dakota, Minnesota, Wisconsin and Michigan.

According to Northern, the Canadian gas purchased from Unigas replaces gas purchased from Unigas' wholly owned subsidiary, Consolidated Natural Gas Limited (Consolidated), under a February 4, 1979, contract which Northern states expired October 31, 1989. Because of the late date that Northern and Unigas entered into negotiations for a long-term gas supply arrangement, Northern obtained a short-term blanket import authorization on September 5, 1989, DOE/FE Opinion and Order No. 331, which expires October 31, 1991. Under the November 1, 1989, Northern/Unigas agreement, Northern is entitled to purchase from Unigas up to 100,000 Mcf of Canadian gas per day on a firm basis commencing November 1, 1989, through October 31, 2001.

The Northern/Unigas agreement provides that Northern is obligated to

take 60 percent of the annual contract quantity or be subject to an additional charge. Northern may take additional volumes above the base contract volumes of up to 100,000 Mcf per day called "incentive volumes" at a negotiated price agreed upon with Unigas at the times such incentive volumes are taken. If at the end of the contract year, Northern has taken less than 58 percent of the annual contract quantity after crediting any incentive volumes taken against Northern's base contract obligations, Northern must pay Unigas a deficiency charge levied on the volumes not taken below the minimum quantity. The deficiency charge would be equal to 25 percent of Northern's weighted average cost of gas (WACOG) purchased from U.S. producers in the contract year as reflected in Northern's purchased gas adjustment filed with the Federal Energy Regulatory Commission (FERC).

For gas delivered under the Northern/Unigas contract each month, Northern must pay Unigas a total monthly amount (in Canadian dollars) comprised of (1) the base volume deliveries multiplied by the base volume price (WACOG minus a credit for demand charges that can be passed through as-billed under FERC Order No. 256); plus (2) incentive volume deliveries multiplied by the applicable negotiated price; plus (3) the total monthly cost of fuel gas billed by Canadian transporters; minus (4) a credit for volumes of gas transported for customers other than Northern times \$.10 granted by Foothills PipeLines Limited, one of the Canadian transporters of the gas.

The Northern/Unigas contract also provides for renegotiation of the price terms upon written notice by either party on November 1, 1990, November 1, 1991, and November 1, 1992. In addition, the contract provides for reduction of the volumes Northern is obligated to take upon service of a notice to Unigas showing that Northern has lost customers that has resulted in a reduction of Northern's gas supply needs.

In support of its application, Northern asserts that by tying the price of the imported gas to the price of competing gas in the markets served by Northern, the Northern/Unigas contract assures that the price of the gas will remain competitive over the term of the authorization requested. Northern also asserts that the imported gas would be delivered in the center of its market area and thus would be readily available for its general system supply. Further, according to the applicant, Unigas has both the gas supply and firm transportation to deliver the imported gas to Northern and historically, Unigas has never defaulted on any of its gas supply obligations.

A notice of the application was issued on August 15, 1990,<sup>1</sup> inviting protests, motions to intervene, notices of intervention, and comments to be filed no later than September 28, 1990. Interstate Power Company, Midwest Gas,

a division of Iowa Public Service Company, and Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) jointly, all customers of Northern, intervened without comment. Western Gas Marketing Limited (Western), a competing supplier of gas to Northern, initially intervened in opposition to Northern's application contending that Unigas' gas supply was not secure and that the Northern/Unigas contract was in effect a short term contract that did not support a ten-year import authorization. Western also cited litigation regarding the validity of the contract in Canadian courts as a basis for denying Northern's application or for holding a trial-type hearing. Alternatively, Western asked that FE hold consideration of Northern's application in abeyance pending completion of the litigation regarding the Northern/Unigas gas supply contract. On November 28, 1990, Western withdrew its contentions, its procedural requests and its opposition to Northern's application. This order grants intervention to all movants.

## II. Decision

The application filed by Northern 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."<sup>2/</sup> 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 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. Northern's uncontested import proposal, as set forth in its application, is consistent with the DOE policy guidelines.

Northern has freely negotiated the gas supply agreement with Unigas and obtained terms that provide flexibility to the import arrangement and help ensure that the import arrangement will be market responsive over the term of the contract. Although Northern is obligated to purchase a minimum of 60 percent of the annual contract quantity, credit is given against this obligation for volumes, called incentive volumes, purchased on any day during the contract year over and above the base contract volumes of 100,000 Mcf per day. In addition, the Northern/Unigas gas supply contract provides for a

reduction in the volumes Northern is obligated to take if Northern's gas supply needs have been reduced by loss of customers.

Further, the Northern/Unigas gas supply contract ties the price of the imported gas to the price of competing domestic gas supplies and provides for annual renegotiation of the pricing and other terms of the gas supply contract at the end of each of the first three years of the contract term. For these reasons, the DOE finds that the import arrangement is 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 is not rebutted in this proceeding.

No party is contesting the security of the Canadian gas supply to be purchased from Unigas which the applicant asserts is secure. Historically, Canadian gas supplies have proven to be reliable. Accordingly, the DOE finds that this import will not lead to undue dependence on an unreliable source of gas 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 Northern authority to import up to 100,000 Mcf of natural gas from Canada commencing on the date of the issuance of this order through October 31, 2001, is not inconsistent with the public interest.<sup>4/</sup>

### ORDER

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

A. Northern Natural Gas Company, Division of Enron Corp. (Northern) is authorized to import up to 100,000 Mcf of natural gas per day from Unigas Corporation (Unigas) through October 31, 2001, in accordance with the provisions of a gas sales agreement with Unigas as described in the application discussed in this Opinion and Order.

B. Northern shall notify the Office of Fuels Programs (OFP), Fossil Energy, FE-50, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in writing of the date of initial deliveries of natural gas imported under Ordering paragraph A above within two weeks after deliveries begin.

C. With respect to the imports authorized by this Order, Northern 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. December 20, 1990.

--Footnotes--

1/ 55 FR 34961, August 27, 1990.

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

3/ 49 FR 6684, February 22, 1984.

4/ Because the proposed importation of gas will use existing facilities, the DOE has determined that granting this application is clearly not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, et seq.) and therefore an environmental impact statement or environmental assessment is not required. See 40 CFR Sec. 1508.4 and 54 FR 12474 (March 27, 1989).