Cited as "1 FE Para. 70,430"

Natural Gas Pipeline Company of America, Great Lakes Gas Transmission Limited Partnership (FE Docket No. 91-09-NG), March 21, 1991.

DOE/FE Opinion and Order No. 487

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

I. Summary

The Department of Energy (DOE) is granting the application of Natural Gas Pipeline Company of America (Natural) to import up to 171,325 Mcf of natural gas per day from Canada through October 31, 2000, to be purchased from Western Gas Marketing Limited (Western). The approval is based upon a determination that the import will provide long-term, secure supplies of needed gas on market responsive terms. This Opinion and Order also amends the existing import authorization of Great Lakes Gas Transmission Limited Partnership (Great Lakes LP) to eliminate volumes imported by Great Lakes LP for Natural.1/

II. Background

On January 28, 1991, Natural filed an application, which was supplemented on January 31, 1991, with the Office of Fossil Energy (FE) of 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 171,325 Mcf of Canadian gas per day from Western, the marketing agent for TransCanada PipeLines Limited (TransCanada), beginning on the date authorization is granted through October 31, 2000. These volumes are intended for system supply. The gas would be imported into the United States near Emerson, Manitoba, at the existing interconnection of the pipeline systems of TransCanada and Great Lakes LP. Great Lakes LP would then transport the gas to an interconnection with ANR Pipeline Company (ANR) at Fortune Lake, Michigan, and ANR would redeliver it to Northern's system near Woodstock and Joliet, Illinois. No new domestic pipeline construction would be required to implement the proposed import.

Natural operates two main gas pipelines and extensive underground storage fields that serve municipalities and public utilities throughout the Midwest in nine states. The Amarillo Line extends from points near Amarillo, Texas, northward to Chicago, Illinois. The other mainline, the Gulf Coast Line, extends from gas producing areas in Louisiana and the Texas Gulf Coast to Chicago, Illinois, where the two mainlines interconnect. The majority of Natural's sales are made in Illinois.

Natural imports Canadian gas directly from ProGas Limited, and, over the past twenty years, has received gas from Great Lakes LP (the successor to Great Lakes Gas Transmission Company), which has imported and resold Canadian gas to Natural.2/ According to its application, Natural purchased 171,325 Mcf per day of Canadian gas from Great Lakes LP; however, Great Lakes LP's authority to import a substantial portion of this amount expired November 1, 1990.3/

This application was initiated because Natural and Great Lakes LP agreed that Great Lakes LP would "unbundle" its imports of gas which it purchases from TransCanada and resells to Natural, and Natural would purchase the gas directly from Canada. Natural's proposal culminates a transition that Great Lakes Transmission began several years ago to unbundle its sales and transportation functions.4/

Pursuant to a letter of agreement between Natural and Western dated October 31, 1990, Natural would purchase a daily contract quantity (DCQ) of up to 171,325 Mcf of gas for an initial term beginning April 1, 1991, and ending October 31, 2000, with a provision for automatic year to year extension thereafter.5/ The agreement is subject to certain conditions precedent, including receipt of all U.S. and Canadian regulatory approvals and approval from the producers from whom Western intends to purchase the gas for resale to Natural. Natural asserts all conditions precedent have been satisfied except its receipt of import authorization from DOE.

Natural would pay an import price composed of a monthly demand charge and a commodity charge. The monthly demand charge is equal to the sum of the tolls and charges for firm transportation on the Nova Corporation of Alberta and TransCanada systems to the Emerson, Manitoba import point and a supply reservation fee. The supply reservation fee is contractually set at approximately $0.15 per Mcf.6/ The commodity component of the import price is determined by subtracting a transportation allowance of $0.32 per Mcf from a spot reference price. The transportation allowance is subject to adjustment and generally represents a portion of transportation costs incurred to get the Canadian gas to Natural's system. The spot reference price is the arithmetic average of index prices reported by Inside FERC's Gas Market Report for spot gas deliveries to Natural in Oklahoma, Louisiana, and its Gulf Coast Line in Texas. Natural states that the import price in November and December 1990 would have been $2.21 per Mcf and $2.33 per Mcf, respectively, using a 100 percent load factor.

The agreement contains both minimum daily and minimum seasonal take provisions. If Natural takes less than 75,000 Mcf per day for the months December through February and 50,000 Mcf per day for the months March through November, then Natural would make a deficiency payment of $0.10 per Mcf on the portion not taken. Natural is required to purchase at least 70 percent of the DCQ times the number of days in the winter period November--March and 50 percent of the DCQ times the number of days in the summer period April--October (approximately 18,109 and 18,332 MMcf, respectively). The payment for seasonal deficiencies is $0.20 per Mcf.

The parties would have a one-time right to terminate the contract after five years. Before the end of the fifth contract year, either party may seek renegotiation of the pricing or volumetric terms to be effective beginning in the sixth year. Absent agreement, the contract would terminate.

In support of the application, Natural asserts that the requested authorization simply continues a service historically provided to it through the importation of Canadian gas by Great Lakes Transmission and Great Lakes LP. The total volume of gas imported from Canada would be the same volume that Natural had previously been entitled to receive in sales from Great Lakes LP. Natural states that the proposed import from Western would account for 16 percent of its total gas supply; 23 percent of which comes from Canada.

DOE published a notice of receipt of Natural's application in the Federal Register on February 13, 1991,7/ inviting protests, motions to intervene, notices of intervention, and comments to be filed by March 15,

1991. A motion to intervene without comment or request for additional procedures was filed by Midwest Gas. Western filed a motion to intervene in support of the application. Additionally, an intervention by Interstate Power Company (Interstate) was filed four days late, but it made no comment on the merits of the application. Interstate has shown an interest in the proceeding and its participation will not delay the proceeding or prejudice the rights of any other party. This order grants intervention to all movants.

III. Decision

The application filed by 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, an import must be authorized unless there is a finding that it "will not be consistent with the public interest." 8/ This determination is guided by DOE's natural gas import policy guidelines, under which the competitiveness of the import in the markets served is the primary consideration for meeting the public interest test.9/ DOE also considers, particularly in long-term arrangements, need for and the security of the imported gas supply.

The DOE guidelines state that the competitiveness of an import arrangement will be assessed by consideration of the whole fabric of the arrangement. They contemplate that the contract provisions should be sufficiently flexible to permit pricing and volume adjustments as required by market conditions and availability of alternative fuels, including domestic natural gas. Natural's uncontested import proposal, as a whole, is competitive. In conformity with DOE's market-oriented policy, the contract's pricing structure which is tied to spot gas would permit the import price to respond to changing market conditions. Flexibility exists in the arrangement through the inclusion of price and volume renegotiation provisions that allow the parties either to renegotiate if market conditions change or to get out of the contract. Finally, although Natural has a definite commitment to take a minimum amount of gas, the winter/summer minimum take provisions reflect seasonal differences in demand.

Need for the gas is viewed under the DOE guidelines as a function of marketability and gas is presumed to be needed if it is competitive. We have found Natural's proposed import arrangement is competitive and, therefore, can be presumed to be needed.

In addition, the security of this Canadian gas supply has not been disputed. Natural gas has been imported from Canada for many years and there has been no instance of a major supply interruption that would call into question Western's reliability as a gas supplier to this country. Natural asserts there are sufficient reserves to back up the proposed import. Accordingly, DOE finds that this 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.

After taking into consideration all of the information in the record of this proceeding, I find that granting Natural authorization to import up to 171,325 Mcf per day of natural gas through October 31, 2000, is not inconsistent with the public interest.10/ In conjunction with the new authorization issued herein, this order shall also modify Great Lakes LP's current authorization to eliminate 4,409 Mcf of gas per day previously imported by Great Lakes LP for Natural.11/ Since Natural was its only remaining sales customer, Great Lakes LP will no longer have authority to import gas from TransCanada and resell that gas.12/

ORDER

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

A. Natural Gas Pipeline Company of America (Natural) is authorized, effective immediately, to import from Canada at the international border near Emerson, Manitoba, up to 171,325 Mcf of gas per day in accordance with the provisions discussed in this Opinion and Order and contained in the October 31, 1990, letter of agreement between Natural and its Canadian supplier, Western Gas Marketing Limited (Western), submitted as part of the application filed by Natural on January 29, 1991. The term of this authorization ends on October 31, 2000.

B. The natural gas import authorization granted by the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) on January 3, 1980, in Docket No. 79-01-NG, as most recently amended by Ordering Paragraph B of DOE/FE Opinion and Order No. 416, issued by DOE's Office of Fossil Energy on August 8, 1990, in Docket No. 90-03-NG, is hereby further amended to reduce the daily volumes that Great Lakes Gas Transmission Limited Partnership is authorized to import from TransCanada PipeLines Limited by 4,409 Mcf, from 27,709 Mcf per day to 23,300 Mcf per day.

C. Natural shall file with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, the gas sales contract that underlies the imports authorized by this Order, within 10 days of its execution. Thereafter, Natural shall file any amendment to the pricing terms at least 30 days in advance of its effective date.

D. With respect to the imports authorized by this Order, Natural shall file with the Office of Fuels Programs within 30 days following each calendar quarter, quarterly reports showing by month the total volume of natural gas imports in Mcf and the average price per MMBtu paid for those volumes at the international border. The price information shall itemize separately the demand charge, commodity charge, reservation fee, and deficiency payment (if any) on a monthly and per unit (MMBtu) basis.

E. The motions to intervene filed by Midwest Gas, Western Gas Marketing Limited, and Interstate Power Company are hereby granted, provided that participation of the intervenors shall be limited to matters specifically set forth in their motion to intervene and not herein specifically denied, and that admission of such 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., March 21, 1991.

--Footnotes--

1/ Great Lakes LP is a partnership composed of two general partners and one limited partner. The general partners are TransCanada GL Inc., a subsidiary of TransCanada PipeLines USA Ltd., and Coastal Great Lakes, Inc., a subsidiary of American Natural Resources Company, which is in turn a division of Coastal Natural Gas Company. The limited partner is Great Lakes Gas Transmission Company, which is owned by TransCanada Pipelines USA, Ltd., a subsidiary of TransCanada PipeLines Limited, and by Coastal Natural Gas Company, a subsidiary of the Coastal Corporation.

2/ On April 6, 1990, Great Lakes Transmission Company (Great Lakes Transmission) applied to DOE for authority to transfer its existing import and export authorizations to Great Lakes LP. On the same date, Great Lakes Transmission applied to the Federal Energy Regulatory Commission (FERC) in Docket Nos. CP90-1162-00O and CP90-111-O02 for authority to transfer its facilities, operations, and services to Great Lakes LP. DOE/FE Opinion and Order No. 424, issued September 24, 1990, in Docket No. 90-28-NG, authorized the transfer of import/export authority retroactive to April 6, 1990.

3/ All of the Canadian gas Great Lakes LP currently purchases for sale to Natural is from Western under the existing blanket import authority granted to Western Gas Marketing U.S.A. Ltd. in DOE/FE Opinion and Order No. 442 issued October 24, 1990.

4/ The FERC issued an order on September 13, 1990, in Docket No. CP89-335-000 permitting Great Lakes Transmission to abandon sales service to Natural provided import authorization is obtained from DOE for the volumes applied for herein. Subsequently, on November 28, 1990, the FERC authorized Great Lakes LP in Docket Nos. CP90-1162 and CP66-111-002 to acquire and operate all of Great Lakes Transmission's pipeline facilities and to perform Great Lakes Transmission's natural gas sales and transportation services. See 52 FERC Para. 61,255 and 53 FERC Para. 61,264.

5/ Although many gas supply contracts have evergreen clauses providing for automatic continuation until terminated by either party, it has been DOE's policy to issue long-term import authorizations that do not exceed the initial expiration date of a contract. This in no way forecloses an applicant's ability to file for an extension of import authority at a later time.

6/ References herein are to U.S. dollars.

7/ 56 F.R. 5812 (February 13, 1991).

8/ 15 U.S.C. 717b.

9/ 49 F.R. 6684, February 22, 1984.

10/ Because the proposed importation of gas will use existing facilities, DOE has determined that granting this application is 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 F.R. 12474 (March 27, 1989).

11/ On January 31, 1991, Natural filed a letter it received from Great Lakes LP dated January 30, 1991, stating that Great Lakes LP would not oppose having its import authorization reduced by 4,409 Mcf per day.

12/ This order in no way alters Great Lakes LP's existing import/export authority with respect to its transportation gas for TransCanada or volumes imported for compressor fuel and other company uses.