Cited as "1 FE Para. 70,460"

Northern Natural Gas Company (FE Docket No. 91-04-NG), June 24, 1991.

DOE/FE Opinion and Order No. 514

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

I. Background

On January 8, 1991, Northern Natural Gas Company (Northern) applied to the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to import up to 47,500 Mcf per day of natural gas from Canada through October 31, 2001.1/ The application was filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. Northern, a wholly owned subsidiary of Enron Corporation (Enron), is engaged in the purchase, transmission, and sale of natural gas in interstate commerce. Northern's mainline transmission system extends from the Texas Panhandle area to the northern parts of Wisconsin, Minnesota, and northwest Michigan. It serves customers in the States of Kansas, Nebraska, Iowa, South Dakota, Minnesota, Wisconsin, and Michigan.

Northern proposes to import this gas from Western Gas Marketing Limited (Western Gas) for general system supply. Western Gas is a wholly owned subsidiary of TransCanada PipeLines Limited (TransCanada). The volumes would enter the United States near Emerson, Manitoba and be transported from that point through the existing pipeline facilities of Great Lakes Gas Transmission Limited Partnership. No new pipeline construction would be required.

Under the terms of Northern's gas sales and purchase agreement with Western Gas dated November 1, 1990,2/ Northern is obligated to nominate 60 percent of its base contract quantity of 47,500 Mcf per day on an annual basis or be subject to an additional charge for volumes not taken below the minimum quantity. Northern has no daily minimum obligation; i.e., from day to day the contract allows Northern's takes to vary from 0 to 100 percent of the contract quantity. In addition, Northern may nominate Incentive Volumes in excess of Base Volumes nominated on a particular day.

If Northern fails to meet its 60 percent annual obligation, Western Gas would retroactively credit Incentive Volumes delivered during the contract year as Base Volumes to the extent necessary to make up the Base Volume deficiency (BV deficiency). After these incentive volume credits, if Northern's Base Volume nominations remained less than 58 percent of the annual contract quantity for the contract year, Western Gas could assess a deficiency charge equal to 25 percent of Northern's weighted average cost of gas (WACOG) price for that contract year times the remaining BV deficiency. The contract stipulates that in satisfying any BV deficiency, it is Northern's option at its sole discretion whether to nominate the required quantities, pay the deficiency shortfall charge, or employ a combination of both.

For Base Volumes delivered each month, Northern would pay Western Gas a unit price based on Northern's weighted average cost during the month for purchases of U.S. gas included in Northern's Purchased Gas Adjustment (PGA) filed with the Federal Energy Regulatory Commission (FERC), minus a commodity charge credit based on the percentage of Canadian transporter demand charges which Northern is required under FERC Opinion No. 256 policy to recover in the commodity portion of its modified fixed variable designed rates. That percentage may not exceed 18 percent. In addition, Northern would pay demand charges billed to Western Gas each month by Canadian transporters and fuel gas costs incurred by Northern for such transportation. The price for Incentive Volumes would be negotiated each month.

Based on data for the twelve month period ending March 31, 1991, Northern's WACOG ranged from $1.21 to $1.92 per MMBtu (its annual average WACOG during the period was $1.38 per MMBtu).3/ Northern states that for March 1991 the commodity cost under the contract with Western Gas would have been $1.25 per MMBtu after subtracting a commodity cost credit of $0.07. As previously noted, however, the total price paid for Base Volumes consists of the adjusted commodity cost plus the NOVA Corporation of Alberta (NOVA) and TransCanada demand tolls and charges for firm transportation to the Emerson, Manitoba import point. Northern estimates that if deliveries had occurred in March 1991, the calculated price of the imported gas at 100 percent load factor would have been $1.69 per MMBtu, including transportation charges in Canada of $0.44 and an adjusted commodity cost of $1.25.

Nearly all provisions of the contract, including the price and quantity provisions, are subject to annual renegotiation at the request of either party. If renegotiation is unsuccessful within sixty days, then either party may request arbitration. With respect to the price that would be paid for the gas, the objective of renegotiation and arbitration would be to achieve a price that would be competitive with other long-term, firm supplies delivered into Northern's system and with prices received in comparable contracts for Alberta gas. The contract does not provide for redetermination through arbitration of either the payment of the demand charge components or the calculation of these components.

Finally, the volumes Northern is obligated to take may be reduced if it notifies Western Gas that its gas sales have significantly declined.

Western Gas would fulfill its obligations to Northern through reserve-based gas purchase agreements with various Canadian producers, allowing Northern to purchase volumes from a wide variety of producing areas in western Canada and a wide variety of receipt points on the NOVA gathering and transmission system in Alberta.

II. Interventions and Comments

DOE published a notice of receipt of Northern's application in the Federal Register on April 18, 1991,4/ inviting protests, motions to intervene, notices of intervention, and comments to be filed by May 20, 1991. A motion to intervene without comment or request for additional procedures was filed by Midwest Gas. Midwest Gas is a distribution company customer of Northern that serves Iowa, Nebraska, South Dakota, and Minnesota. Western Gas filed a motion to intervene in support of the application. This order grants intervention to Midwest Gas and Western Gas.

III. 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, 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 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.6/ 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 a 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 competing alternative fuels, including domestic natural gas.

Northern's uncontested import proposal, as a whole, is competitive. DOE agrees with Northern and Western Gas that the contract terms meet the standard established by the DOE guidelines. As discussed above, the contract price for Base Volumes is calculated according to Northern's PGA filed with the FERC less a percentage of Canadian transporter demand charges recovered by Northern in the commodity portion of its modified fixed variable rates. DOE shares the opinion of Western Gas that:

> Since it is indexed on a monthly basis to the cost of other supplies available to Northern, the price of Base Volumes under the Contract is structured to ensure it remains competitive over the term of the import. The pricing terms for Incentive Volumes are similarly crafted to ensure these volumes remain competitive with alternate supplies available to Northern since Incentive Volume Prices are renegotiated monthly.7/

Reinforcing this position that the import arrangement would be competitive, Western Gas added, and DOE concurs:

> [F]lexibility and continued competitiveness are enhanced over the import term since nearly all Contract provisions, including price and quantity provisions, are subject to annual renegotiation and arbitration at either party's option. Annual renegotiation will ensure that the cost of gas under the Contract remains competitive with the total cost of other firm sources of gas delivered to Northern's market zone and keep the price of gas competitive with comparable sources of firm gas supply from Alberta.8/

Need for the gas is viewed under the guidelines as a function of marketability and gas is presumed to be needed if it is competitive. We have found that Northern's proposed import arrangement is competitive and, therefore, can be presumed to be needed. In addition, we note that Canadian gas has been an integral part of Northern's supply portfolio for the last decade.

Finally, the security of this Canadian gas supply has not been disputed. The proposed import volumes would be obtained from TransCanada's contracted supply pool. In light of TransCanada's historical and uncontested reliability as a supplier, and TransCanada's and Western Gas' commitment to use all reasonable efforts to maintain sufficient reserves in the supply pool for delivery to Northern, DOE finds that security of supply has been established.

IV. Conclusion

After considering all of the information in the record of this proceeding, I find that granting Northern authorization to import up to 47,500

Mcf per day of natural gas from Canada through October 31, 2001, in accordance with the provisions of its gas sales agreement with Western Gas, is not inconsistent with the public interest.9/

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 (Northern) is authorized to import at Emerson, Manitoba, up to 47,500 Mcf per day of Canadian natural gas, in accordance with the provisions of its November 1, 1990, gas sales contract with Western Gas Marketing Limited (Western Gas), as described in the application and discussed in this Opinion and Order.

B. The authorization is effective immediately and shall continue through October 31, 2001.

C. 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.

D. With respect to the imports authorized by this Opinion and Order, Northern shall file with OFP, within 30 days following each calendar quarter, quarterly reports showing by month, the total volume of natural gas imports in Mcf and the average purchase price per MMBtu at the international border. The volume and price information shall be reported separately for Base Volumes and Incentive Volumes, including a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis when applicable.

E. The motions to intervene filed by Midwest Gas and Western Gas are hereby granted provided that their participation shall be limited to matters specifically set forth in their motions to intervene and not herein specifically denied, and that admission of these intervenors shall not be construed as recognition that they may be aggrieved because of any order issued in this proceeding.

Issued in Washington, D.C., June 24, 1991.

--Footnotes--

1/ Northern, on March 22, 1991 and April 1, 1991, supplemented its application with letters providing further information about the import price.

2/ Northern, a Delaware corporation, was established in 1990 as a separate legal entity in a restructuring of Enron. On December 31, 1990, Northern Natural Gas Company, Division of Enron, transferred all of its assets and obligations to Northern, including the Gas Sales Contract filed in this proceeding.

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

4/ 56 F.R. 15872 (April 18, 1991).

5/ 15 U.S.C. 717b.

6/ 49 F.R. 6684, February 22, 1984.

7/ Western Gas' motion to intervene at 8 (filed May 20, 1991).

8/ Ibid.

9/ Because the proposed importation of gas will use existing pipeline 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 (NEPA) of 1969 (42 U.S.C. 4321, et seq.) and therefore an environmental impact statement or environmental assessment is not required. See 40 C.F.R. Sec. 1508.4 and 54 F.R. 12474 (March 27, 1989).