Cited as "1 FE Para. 70,476"

Northern Natural Gas Company (FE Docket No. 91-33-NG), August 30, 1991.

DOE/FE Opinion and Order No. 528

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

I. Background

On May 10, 1991, as supplemented on May 30, 1991, and June 4, 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 20,000 Mcf per day of natural gas from Canada on a firm basis from Mobil Oil Canada (Mobil Canada), commencing on the effective date of the requested authorization through October 31, 2000. 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 Delaware corporation with its principal place of business in Omaha, Nebraska, is an interstate natural gas pipeline company. It would use the proposed imports for its system supplies.

The gas would be imported into the United States at the international border near Emerson, Manitoba and transported to Northern on the existing pipeline facilities of Great Lakes Gas Transmission Limited Partnership (Great Lakes). Gas produced in Alberta and British Columbia would be transported by Mobil Canada on the pipeline system of NOVA Corporation of Alberta (Nova). Gas produced in Saskatchewan would be transported by TransGas Limited (TransGas). TransCanada PipeLines Limited (TransCanada) would provide transportation from the NOVA and TransGas systems to the Emerson import point. No new pipeline construction would be required.

Northern and Mobil Canada entered into a long-term gas purchase agreement on August 24, 1990, that has a primary term of November 1, 1990, through October 31, 1995, which would be extended for a secondary term until October 31, 2000, if both parties can agree, on or before October 31, 1994, that the terms and conditions of the agreement are mutually satisfactory for its continuance. The contract contains a three-part pricing structure consisting of a commodity charge, a demand charge, and a reservation fee.1/ The commodity charge would be the commodity price times the daily volumes nominated by Northern. Each month Mobil Canada would provide Northern an estimated commodity price at least two days before Northern is to inform sales customers of its commodity price for the delivery month. Northern could either accept or reject the estimated commodity price. If Northern rejects the estimated price, the commodity price would be determined pursuant to a provision of the purchase agreement which adjusts a base price of $1.46 (U.S.) per Mcf upward or downward by the change in a composite index of prices for domestic spot gas delivered to four pipelines (ANR Pipeline Company, Panhandle Eastern Pipeline Company, Natural Gas Pipeline Company of America, and Northern) and the average Alberta border price. The demand charge would consist of the monthly toll charges for transportation in Canada times the maximum daily volumes (MDV) of 20,000 Mcf. The reservation fee would be calculated monthly and is equal to 16 percent of the MDV (possibly 10 percent during summer except for April) times the commodity price. Northern states that the price of the gas at the international border at a 100% load factor would have been $2.17 (U.S.) per Mcf as of January 1991 using the U.S./Canadian currency conversion factor then in effect. That price would have

consisted of a demand charge of $.41, a commodity price of $1.50, and a reservation fee of $.26.

The purchase agreement also includes an "Opinion 256" credit to compensate Northern if the Federal Energy Regulatory Commission (FERC) does not allow it to pass through all of Mobil Canada's demand charges "as-billed" under FERC's modified fixed-variable (MFV) rate structure. Where total demand charges are not permitted to be recovered under FERC's MFV methodology, Northern would receive a credit from Mobil Canada reducing its commodity price of gas. The credit would be equal to 70 percent of the difference (as-billed deficiency) between the demand charges approved in Northern's purchased gas adjustment (PGA) filing with FERC and the actual demand charges paid to Mobil Canada.

Northern would have to pay an annual deficiency payment if it takes less than sixty percent of the maximum annual volumes in any contract year. The deficiency payment would consist of the difference between sixty percent of the maximum annual volumes and the actual volumes taken during the year, times twenty-five percent of the weighted average commodity price for the year.

Further, Mobil Canada would set a minimum price applicable to each contract year. If, with respect to the summer months, the commodity price is less than the minimum price, Mobil may cease or curtail deliveries to Northern. However, Northern would be deemed to have taken a volume of gas equal to the MDV for the purpose of calculating the annual deficiency payment and would not be liable for transportation charges or the reservation fee with regard to the non-delivered volumes.

Finally, the purchased agreement may be renegotiated at the request of either party at any time during the first three years of either the primary or secondary terms. Also, Northern can unilaterally reduce its annual maximum volumes obligation if it determines that it is experiencing a significant reduction in its gas sales. This reduction could be accomplished either by Northern assigning to another purchaser all or part of its contract rights or obligations, or by Northern assigning all or part of the contract to an assignee or new purchaser designated by Mobil. However, if no assignee or new purchaser is designated Northern could still implement the desired volume reductions.

Northern urges that the gas supply is competitive, needed and secure. Northern states that the purchase agreement ensures that the price will remain competitive with prices of major competing energy sources available to it. Further, Northern states that the supplies are needed to meet its general system demand and that receiving the gas in its traditional north-end market area will provide the most operationally efficient supply source to meet the requirements of customers served from the northernmost portions of its system. Finally, Northern submits that Mobil Canada has secured the necessary gas supplies to fulfill its obligations, in addition to the historical reliability of Canadian gas generally.

A notice of receipt of the application was issued on June 26, 1991,2/ inviting protests, motions to intervene, notices of intervention, and comments to be filed by August 1, 1991. A motion to intervene without comment or request for additional procedures was filed by Great Lakes. This order grants intervention to Great Lakes.

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, an import must be authorized unless there is a finding that it "will not be consistent with the public interest." 3/ 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.4/ 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 that the contract terms meet the standard established by the DOE guidelines. As discussed above, Northern has entered into a freely negotiated, long-term gas purchase agreement with Mobil Canada under contract terms that should ensure the price of the gas will remain market-responsive and competitive over the term of the authorization requested. If Northern declines to accept Mobil Canada's commodity price for the applicable month, the alternate price index would automatically adjust the price by setting the commodity rate based on changes in the price of gas in the U.S. and Canada. Prices could be renegotiated at any time that the contract remains in effect. Although the contract contains a minor annual deficiency payment for annual volumes not taken, Northern may unilaterally reduce its minimum annual takes level if it experiences a significant reduction in demand from its customers.5/ Thus, the contract should remain flexible and competitive over the full term.

Need for the gas is viewed under the import 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 supply has not been disputed. Natural gas has been imported from Canada for many years, and there has been no instance of a major natural gas supply interruption that would call into question Canada's reliability as a source of natural gas supplies.

III. Conclusion

After considering all of the information in the record of this proceeding, I find that granting Northern authorization to import up to 20,000 Mcf per day of natural gas from Canada through October 31, 2000, in accordance with the provisions of its gas sales agreement with Mobil Canada, is not inconsistent with the public interest.6/

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 20,000 Mcf per day of Canadian natural gas, in accordance with the provisions of its August 24, 1990, gas sales contract with Mobil Oil Canada (Mobil Canada), as described in the application and discussed in this Opinion and Order.

B. The authorization is effective immediately and shall continue through October 31, 2000.

C. Northern shall notify the Office of Fuels Programs (OFP), Fossil Energy, FE-5O, 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 monthly price information shall include a breakdown of the demand, commodity and reservation charges, on a monthly and per unit (MMBtu) basis. Northern Natural shall also notify OFP of any deficiency payments it makes to Mobil during any contract year, including an explanation of how the amount paid was derived, in the first quarterly report following the deficiency payment.

E. The motion to intervene filed by Great Lakes 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 may be aggrieved because of any order issued in this proceeding.

Issued in Washington, D.C., on August 30, 1991.

--Footnotes--

1/ The demand charges in this import arrangement relate almost entirely to the transportation/fixed costs.

2/ 56 F.R. 30382 (July 2, 1991).

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

4/ 49 F.R. 6684, February 22, 1984.

5/ With regard to the possibility that Northern could reduce its purchase obligation by assigning all or part of the Mobil contract to a third party purchaser, DOE's procedural rules section 590.405 prohibit the transfer or assignment of import or export authority unless specifically authorized by the Assistant Secretary for FE. If Northern wishes to assign its contract and import authority rights to another purchaser, it must apply for and obtain approval from DOE.

6/ 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).