Cited as "1 FE Para. 70,481"

Northern Natural Gas Company (FE Docket No. 91-05-NG), September 20, 1991.

DOE/FE Opinion and Order 533

Order Granting Authorization to Import Natural Gas from Canada and Granting Interventions

I. Background

On January 8, 1991, Northern Natural Gas Company (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, to import from Canada up to 50,000 Mcf of natural gas per day on a firm basis from Western Gas Marketing Limited (WGML) commencing on the date of authorization through March 31, 1996. 1/ The gas would be imported at the international border near Emerson, Manitoba, using existing pipeline facilities of Great Lakes Gas Transmission Limited Partnership (Great Lakes). Northern, a Delaware corporation with its principal place of business in Houston, Texas, is an interstate natural gas pipeline company. Northern would use the proposed imports for its system supply.

Northern entered into an agreement to purchase natural gas from WGML on November 1, 1990. Pending action on this application, Northern has been importing gas under the purchase agreement using a two-year blanket authorization previously granted by DOE on September 5, 1989. 2/ The price paid by Northern under the purchase agreement consists of transportation costs, fuel costs, and a per MMBtu charge equal to Northern's weighted average cost of gas (WACOG) for supplies contracted to Northern from United States sources as reflected in Northern's Purchased Gas Adjustment filed with the Federal Energy Regulatory Commission. The transportation charge consists of the firm transportation tolls in Canada on NOVA Corporation of Alberta, TransCanada PipeLines Limited (TransCanada), plus the cost of transportation on Great Lakes to deliver the gas to Northern's system at Carleton, Minnesota. The WACOG fluctuates according to changes in market conditions. Northern states that in the 12-month period ending March 31, 1991, its WACOG ranged from $1.21 to $1.92 per MMBtu for an annual average WACOG of $1.38 per MMBtu during the period. Northern also states that the delivered cost to the border during March 1991 was approximately $1.76 per MMBtu, consisting of a transportation charge of $0.44 per MMBtu and a WACOG of $1.32 per MMBtu. 3/ The contract does not provide for price renegotiation or arbitration.

The purchase agreement requires Northern to purchase a minimum annual volume of 6,000,000 Mcf (5,000,000 Mcf the first contract year). If Northern takes less than the minimum annual volume, it would pay a deficiency charge consisting of the amount of the deficiency times 25% of the WACOG. The obligation for WGML to provide Northern up to 50,000 Mcf per day in gas supplies would be firm, but subject to best-efforts transportation in the event transportation capacity constraints occur on either TransCanada's or Great Lakes' systems. Therefore, while the contract provides for a deficiency payment, the volume used to determine whether a deficiency has occurred is the volume nominated rather than the volume actually received. Northern would be given credit toward its minimum purchase obligations where daily nominations are made and WGML fails to provide the nominated volumes up to the maximum allowable deliveries. Furthermore, the purchase agreement stipulates that, in satisfying any minimum volume deficiency, it is Northern's option whether to nominate the required quantities, pay the deficiency charge, or employ a combination of both.

In addition, Northern may, at its sole discretion, reduce its minimum annual volume obligation due to loss of sales to its customers. 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 WGML. Under the second option, if WGML were unable to secure an assignee or a new purchaser or were unable to obtain the necessary regulatory or governmental authorizations, Northern could still implement the desired volume reductions.

Northern states that it has negotiated competitive price terms with WGML and the need for the gas is demonstrated by its marketability and competitiveness. It also states that the gas supply is secure, inasmuch as WGML's parent, TransCanada, has nearly 19 Tcf of reserves dedicated by Alberta producers, in addition to the reliability of Canadian supplies in general. Finally, Northern states that since no new pipeline facilities will be constructed for the proposed imports, granting the application request will have no adverse environmental impacts.

II. Interventions and Comments

A notice of receipt of the application was issued on May 16, 1991, 4/ inviting protests, motions to intervene, notices of intervention, and comments to be filed by June 21, 1991. Motions to intervene without comments or request for additional procedures were filed by Midwest Gas, Minnegasco, a division of Arkla, Inc., and Interstate Power Company. WGML filed a motion to intervene supporting the application. This order grants intervention to all movants.

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 market 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 WGML that the contract terms meet the standard established by the DOE guidelines. Northern has freely negotiated an arrangement to acquire natural gas under contract provisions that are flexible so that throughout the contract term the price should remain comparable to competing gas supplies and alternate fuels. Although this contract does not provide for renegotiation and arbitration, the commodity price to be paid by

Northern would track its purchases of U.S. gas. The import arrangement's competitiveness is further assured by contract provisions that permit volume reduction due to loss of sales by Northern. 7/

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 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.

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 natural gas supply interruption that would call into question WGML's reliability as a natural gas supplier to this country.

Based on the information in the record of this proceeding, I find that granting Northern authority to import up to 50,000 Mcf per day of natural gas through March 31, 1996, in accordance with the provisions of its gas sales agreement with WGML is not inconsistent with the public interest. 8/

ORDER

For 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 50,000 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 (WGML), as described in the application and discussed in this Opinion and Order.

B. The authorization is effective immediately and shall continue through March 31, 1996.

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 monthly pricing information shall include a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis. In reporting the demand charge, the quarterly report should list separately the unit transportation charges on NOVA, TransCanada PipeLines Limited, and Great Lakes Transmission Limited Partnership. Northern shall also notify OFP of any deficiency payments it makes to WGML during any contract year, including an explanation of how the amount paid was derived, in the first quarterly report following payment.

E. The motions to intervene filed by Midwest Gas, WGML, Minnegasco and Interstate Power Company 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., September 20, 1991.

--Footnotes--

1/ Northern made supplementary filings to its application on March 22, 1991, and April 1, 1991, providing further information on the import price.

2/ 1 FE Para. 70,240, as amended at 1 FE Para. 70,418.

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

4/ 56 F.R. 23581 (May 22, 1991).

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

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

7/ With regard to the possibility that Northern could reduce its purchase obligation by assigning all or part of the WGML 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 assigns its contract and import authority rights to another purchaser, the assignee must apply for and obtain import authorization from DOE.

8/ 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 (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).