UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

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WESTERN GAS MARKETING USA LTD.	)	FE DOCKET NO. 91-45-NG
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ORDER GRANTING LONG-TERM AUTHORIZATION
TO IMPORT NATURAL GAS FROM CANADA
AND GRANTING INTERVENTION

DOE/FE OPINION AND ORDER NO. 637

JUNE 19, 1992

I. BACKGROUND

On July 1, 1991, Western Gas Marketing USA Ltd. (Western Gas USA) filed an application with the Office of Fossil Energy of the Department of Energy (DOE) for authorization to import up to 25,000 Mcf per day of natural gas from Canada. This authorization would begin on the date Western Gas USA receives DOE approval and continue through October 31, 2001. The application was filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. Western Gas USA proposes to buy this gas from Western Gas Marketing Limited (WGML) for resale to Northern Natural Gas Company (Northern). The gas would enter the United States near Monchy, Saskatchewan, where the facilities of Foothills Pipeline (Yukon) Ltd. (Foothills) interconnect with those of Northern Border Pipeline Company (Northern Border). Western Gas USA, a Delaware corporation, markets domestic and imported gas in the United States. The applicant is an affiliate of WGML, the Canadian supplier, and both are wholly-owned subsidiaries of TransCanada PipeLines Limited (TransCanada). Northern and Western Gas USA are not affiliated.

On November 1, 1990, Western Gas USA entered into two contracts. The first contract (the WGML contract) provides for the sale of natural gas by WGML to Western Gas USA. The second contract (the Northern Contract) provides for the resale of the gas purchased by Western Gas USA under the WGML contract to Northern. Interim deliveries under the WGML contract and the Northern contract, which run concurrently, commenced on

November 1, 1990, under the two-year blanket import authority granted Western Gas USA by DOE/FE Opinion and Order No. 442,1/ which expires October 31, 1992.

The key provisions of this import arrangement are controlled by the terms of the Northern contract. WGML is obligated under the WGML contract to deliver the volume of gas nominated each day by Western Gas USA, up to 25,000 Mcf per day, the daily contract quantity in the Northern contract. The Northern contract permits Northern to specify a portion of its daily nomination as base volumes and the remainder as incentive volumes. If in any month Northern fails to so specify or if Northern and Western Gas USA fail to agree on a price for incentive volumes, all volumes nominated by Northern for that month will be deemed to be base volumes. Northern must nominate base volumes which equal or exceed the minimum annual quantity under the Northern contract. In the first three contract years, the minimum annual quantity would equal 75 percent of the annual contract quantity (daily contract quantity multiplied by the number of days in the contract year), and 60 percent for each subsequent contract year. If Northern nominates less than the minimum annual quantity, Western Gas USA would credit and reclassify as base volumes those incentive volumes necessary to eliminate the base volume deficiency for the contract year. If, after reclassification of the incentive volumes, the base volumes remain less than the minimum annual quantity (less two percent (2%) of the annual

1/ 1 FE 70,368. _

contract quantity), Western Gas USA could assess a deficiency charge equal to 25 percent of Northern's weighted average cost of gas (WACOG) for the contract year times the remaining base volume deficiency. The Northern contract also permits a volume reduction if Northern experiences a significant reduction in gas sales.

Under the WGML contract, Western Gas USA would pay WGML the sum of the demand and commodity charges payable each month by Northern under the Northern contract, less the total cost incurred by Western Gas USA for transportation of the gas on the Northern Border system, and any amounts payable by Western Gas USA for U.S. Customs user fees arising out of the import of the WGML contract volumes into the United States.

Under the Northern contract, Northern would pay Western Gas USA an amount in Canadian dollars that is the sum of:

> the quantity of base volumes delivered during such month, multiplied by the base volume price;
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> PLUS
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> the quantity of incentive volumes delivered during such month, multiplied by the negotiated incentive volume price;
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> PLUS
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> the total cost, if any, incurred by Western Gas USA, WGML, and TransCanada during such month for transportation commodity charges and fuel gas in order in order to transport the base volumes and incentive volumes delivered to Northern during such month on the transmission systems of NOVA, Foothills, and Northern Border;

PLUS

the monthly demand charge.

The base volume price under the Northern contract would equal the WACOG price less the commodity charge credit based on the percentage of Canadian transporter charges which Northern is required under FERC Order 256 policy to recover in the commodity portion of its rates. The incentive volume price would be negotiated each month.

The monthly demand charge would equal the sum of service tolls billed by (i) NOVA to TransCanada for the firm transportation of the import volumes within Alberta; (ii) the Foothills System for firm transportation from McNeil, Alberta, to Monchy, Saskatchewan; and (iii) the Northern Border system. However, the monthly demand charge for each month of the first two contract years would consist only of the Northern Border (iii) charge. For each month during the third contract year the monthly demand charge would consist only of the (ii) and (iii) components. For the fourth contract year and thereafter, the monthly demand charge would consist of the sum of components (i), (ii), and (iii).

The Northern contract, to which the WGML contract price is tied, provides for annual renegotiation at the request of either party and arbitration if the parties cannot agree on a new price. The objective of renegotiation and arbitration would be to achieve a gas price that would be competitive with other long-term, firm gas supplies delivered into Northern's system and with

prices paid under comparable contracts for Alberta gas.

WGML would fulfill its obligations to Western Gas USA through reserve based agreements with various Canadian producers. Among other obligations, the WGML contract requires TransCanada and WGML to maintain adequate aggregate proven reserve supply.

In support of its application, Western GAS USA asserts that the pricing, renegotiation, and arbitration provisions in its gas purchase contract provide sufficient flexibility to assure a competitive price that will reflect market conditions throughout the term of the contract. Regarding need, Western Gas USA states that Northern requires the natural gas under the instant import to meet its system supply requirements to its sales customers. Regarding security of supply, the WGML contract contains provisions obligating WGML and TransCanada to maintain an adequate supply of natural gas to serve the instant import throughout its term.

II. INTERVENTIONS AND COMMENTS

A notice of receipt of application was published in the Federal Register on December 12, 1991,2/ inviting protests, motions to intervene, notices of intervention, and comments to be filed by January 13, 1992. A motion to intervene without comment was received from Great Lakes Gas Transmission Limited Partnership.

III. DECISION

The application filed by Western Gas USA has been evaluated

2/ 56 F.R. 64781.

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 an import in the markets served is the primary consideration for meeting the public interest test.4/ DOE also considers, particularly in a long-term arrangement, need for and the security of the imported gas supply.

Western Gas USA's uncontested import proposal, as a whole, is competitive. DOE has reviewed the gas contract and is satisfied that its provisions establish a competitive gas price and provide contracting parties with sufficient flexibility, with respect to both volume and price, to respond to changing market conditions, thus assuring a gas supply that can be marketed competitively over the life of the purchase agreement. In this regard, DOE notes that because the purchase agreement provides that the price be indexed monthly to the cost of other supplies available to Northern, the price is structured to insure that it remains competitive over the term of the import. In addition, the fact that the contract price provisions are subject to annual renegotiation and arbitration at either party's option further insures flexibility and continued competitiveness over the import

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

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

term.

For these reasons, DOE finds that Western Gas USA's proposed import arrangement is competitive and, therefore, under DOE's import guidelines, can be presumed to be needed. In addition, based on Western Gas USA's uncontested assertions that WGML has adequate reserves available to support Western Gas USA's imports and a contract provision that allows Western Gas USA to secure alternate supplies equal to all or part of its DCQ, DOE finds that security of supply has been established.

After considering all of the information in the record of this proceeding, I find that granting Western Gas USA authorization to import up to 25,000 Mcf per day of natural gas from Canada over a term that would expire October 31, 2001, in accordance with the provisions of its gas sales and purchase contract with WGML, as described in Western Gas USA's application, is not inconsistent with the public interest.5/

ORDER

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

A. Western Gas Marketing USA Ltd. (Western Gas USA) is authorized to import at the international boundary near Monchy,

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5/ 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 of 1969 (42 U.S.C. 4331, et

seq.) and therefore an environmental impact statement or environmental assessment is not required. See 40 C.F.R. 1508.4

and 57 F.R. 15122 (April 24, 1992).

Saskatchewan, Canada, up to 25,000 Mcf per day of natural gas in accordance with the provisions of its November 1, 1991, gas sales and purchase contract (gas sales contract) with Western Gas Marketing Limited (WGML), as described in the application and discussed in this Opinion and Order.

B. The term of this authorization shall commence immediately and will end October 31, 2001.

C. Western Gas USA 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, Western Gas USA 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. If no imports have been made, a report of "no activity" for that calendar quarter must be filed. The price information in each report shall itemize separately the demand, commodity, supply reservation charge, and any gas inventory charges under Article 4.05 of the gas sales contract, on a monthly and per unit (MMBtu) basis. Failure to file quarterly reports may result in termination of this authorization.

E. The first quarterly report required by Ordering

Paragraph D is due not later than July 30, 1992, and should cover the period from the date of this order until the end of the current calendar quarter, June 30, 1992.

Issued in Washington, D.C., June 19, 1992.

Charles F. Vacek
Deputy Assistant Secretary
for Fuels Programs
Office of Fossil Energy