

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

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NORTHWEST PIPELINE CORPORATION,	)	
CASCADE NATURAL GAS CORPORATION,	)	
NORTHWEST NATURAL GAS COMPANY,	)	FE DOCKET NO. 92-18-NG
WASHINGTON NATURAL GAS COMPANY,	)	
AND	)	
THE WASHINGTON WATER POWER	)	

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ORDER TRANSFERRING AUTHORITY TO IMPORT  
NATURAL GAS FROM CANADA AND GRANTING INTERVENTIONS

DOE/FE OPINION AND ORDER NO. 664

SEPTEMBER 9, 1992



BACKGROUND

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On February 12, 1992, Northwest Pipeline Corporation (Northwest), Cascade Natural Gas Company (Cascade), Northwest Natural Gas Company (Northwest Natural), Washington Natural Gas Company (Washington Natural), and The Washington Water Power Company (Water Power) 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, requesting the transfer of import authority held by Northwest to Cascade, Northwest Natural, Washington Natural, and Water Power. No new pipeline construction is involved.

Northwest presently imports Canadian natural gas pursuant to DOE/FE Opinion and Order No. 383 (Order 383) issued February 7, 1990. 1/ Order 383 extended Northwest's authority to import up to 152,000 Mcf per day of gas at a point on the international border near Kingsgate, British Columbia, from Westcoast Energy Inc. (Westcoast Energy), in accordance with the Kingsgate Gas Sales Agreement dated September 23, 1960, as amended August 15, 1989 (Kingsgate Agreement). 2/ The primary term of the Kingsgate Agreement expires October 31, 2004. The maximum

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1/ 1 FE 70,301.

2/ On November 1, 1989, Westcoast Energy assigned its entire interest in the Kingsgate Agreement to its wholly-owned subsidiary, Westcoast Energy Marketing Ltd. (WEML). Canadian Hydrocarbons Marketing Inc. (Canadian Hydrocarbons), an indirect, wholly-owned subsidiary of Westcoast Energy succeeded to WEML as

the seller under the Kingsgate Agreement effective April 2, 1992,  
pursuant to an Assignment and Novation dated June 7, 1991.

contract volume under the Kingsgate Agreement is 151,731 Mcf per day, of which approximately 121,916 Mcf per day is available on a firm basis and approximately 29,815 Mcf per day on an interruptible basis.

The proposed transfer of import authority is part of Northwest's transition from a merchant pipeline to an open-access transportation pipeline. 3/ Each of Northwest's four largest customers, and joint applicants in this proceeding, elected to participate in Northwest's sales conversion program. Under Assignment Agreements entered into with Northwest on September 30, 1991, Cascade, Northwest Natural, Washington Natural, and Water Power have agreed to a pro rata assignment, based upon contract demand volumes, of Northwest's major system gas supply purchase contracts, including the Kingsgate Agreement. 4/ The Assignment Agreements also amend the minimum take obligation and one of the renegotiation provisions of the Kingsgate Agreement to reflect the change in Northwest's status as a natural gas merchant. Other than these changes, the application indicates there will be no substantive change in any facet of the currently authorized import, including the total volumes, gas prices, or term of the import.

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3/ See FERC Docket No. CP92-79-000.

4/ Canadian Hydrocarbons, WEML, and Westcoast Energy are also parties to these agreements.

A notice of the application was issued on April 30, 1992, inviting protests, motions to intervene, notices of intervention, and comments to be filed by June 8, 1992. 5/ The Independent Petroleum Association of America and the State Producer Associations (hereinafter the Producers) filed a joint motion to intervene. 6/ Producers oppose the application, arguing it should be conditioned or dismissed, and request in the alternative discovery and a trial-type hearing. Northwest and Washington Natural filed answers to Producers' motion, and Canadian Hydrocarbons and WEML filed a joint motion to intervene with comments. This order grants intervention to all movants.

DECISION \_\_\_\_\_

The requested transfer of import authority has been evaluated under section 3 of the NGA. Section 3 requires approval of this application unless DOE finds that the proposed arrangement "will not be consistent with the public interest," 7/ and therefore establishes a statutory presumption in favor of granting the joint application. DOE's determination

5/ 57 F.R. 19898 (May 8, 1992). \_\_\_\_\_

6/ The State Producer Associations are California Independent Petroleum Association, California Gas Producers Association, Independent Petroleum Association of Mountain States, Independent Petroleum Association of New Mexico, Louisiana Association of Independent Producers and Royalty Owners, Panhandle Producers and Royalty Owners Association, and Texas Independent Producers and

Royalty Owners Association.

7/ 15 U.S.C. 717b.

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is guided by its natural gas import policy guidelines, 8/ under which the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test.

In Order 383, DOE approved the continuation of Northwest's historical gas supply arrangement with Canada. DOE based its decision on a finding that the Kingsgate Agreement contains flexible, market-sensitive provisions, including price adjustment and renegotiation terms, which ensure the import arrangement will remain responsive to market conditions over the term of the authorization. The transfer of authority requested by joint applicants in this proceeding would complete implementation of Northwest's conversion from sales to an open-access transportation program. Applicants assert, since the requested transfer does not change the fundamental terms and conditions of the underlying import arrangement, DOE's findings in Order 383 continue to apply.

In their motion to intervene, Producers argue the transfer of import authority is anticompetitive and inconsistent with the principles set forth by FERC in Opinion Nos. 256 (37 FERC

61,215) and 256-A (39 FERC 61,218). 9/ More specifically,

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8/ 49 F.R. 6684, February 22, 1984.

9/ On December 8, 1986, FERC issued Opinion No. 256 which addressed the appropriate sales rates of a pipeline importer of Canadian gas in connection with gas purchased from Canadian exporters under a two-part purchase contract. The pipeline purchaser was Natural Gas Pipeline Company of America (Natural). In this case, FERC concluded that it would not overturn an

(continued...)

they allege (1) the proposed transfer is an attempt to avoid the "level playing field" requirements of FERC; (2) the amended minimum take provisions in the Assignment Agreements are more onerous and will both reduce the flexibility of the supply arrangements and further insulate Westcoast Energy from competition by, according to Producers, guaranteeing it a 42 percent market share on the systems of the four local distribution companies (LDCs); and (3) the two-part import price to be paid by assignees will unfairly favor Canadian over domestic gas. Producers request DOE to either condition the import to require that costs be shifted from the demand to the commodity component of the border price, or reject the application.

DOE finds Producers' arguments to be without merit. Contrary to Producers' characterization of the proposed transfer as an effort to avoid a "level playing field", Northwest's program to convert sales obligations to firm transportation promotes FERC policies on unbundling and comparability of pipeline services. 10/ Regarding the minimum take argument,

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9/(...continued)  
international contract approved by the Economic Regulatory Administration. FERC retained the two-part rate structure but required some elements in the demand charge paid by Natural be passed through in Natural's commodity charge, as they would be in a domestic transaction under the modified fixed-variable method of cost classification.

10/ See Order No. 636, 57 F.R. 13257 (April 16, 1992), FERC

Stats. & Regs. 30,939.

Northwest, Canadian Hydrocarbons, and WEML emphasize in their comments the revised minimum take provisions do not guarantee Westcoast Energy a 42 percent market share but equates instead to a 10-12 percent share of the LDC markets currently served by Northwest. In addition, these revised take provisions are comparable to Northwest's current obligation already found by Order 383 to be consistent with the public interest, and are subject to renegotiation. 11/ Finally, the two-part rate

structure in the amended Kingsgate Agreement is not inconsistent with FERC Order 256. As DOE has previously found, Order 256 does not apply to circumstances such as this where the import involves direct sales to LDC purchasers who will pay only those demand and commodity costs related to their own purchases nor have Producers demonstrated the rate structure is otherwise inconsistent with the public interest. 12/

Producers request that DOE summarily dismiss this application as deficient on the grounds the joint applicants have failed to meet their burden of proof to show a need for the proposed imports, and DOE cannot in the current gas market determine need. The burden of proof, however, belongs to Producers and they have failed to rebut DOE's previous finding of

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11/ In this regard, DOE notes Producers did not contest the 15-year extension of Northwest's Kingsgate import authority approved by Order 383 that included the comparable minimum take provision.

12/ See, e.g., Brooklyn Union Gas Company, et al; 1 FE 70,285  
— (1990). — — —

need in Order 383, a finding which was based on circumstances that will not change as a result of the proposed transfer. In their comments, the LDC transferees emphasize their historical and continuing dependence on this imported supply. Producers' request for dismissal of the application is therefore denied.

In the event of the foregoing denial, Producers request discovery and a trial-type hearing to resolve alleged issues of fact that generally concern the competitiveness of the proposed imports, their effect on the domestic gas industry, and whether the imports are needed. Producers do not specify in support of their discovery request what additional information is needed to address these issues, whether the information was denied to them by the joint applicants or is required by DOE to make its determination. Nor have Producers demonstrated, as required by 10 CFR 590.313, that a trial-type hearing would materially aid DOE in making its decision or is necessary to ensure the fairness of this proceeding. Producers' concerns are offered without support and, as has been the case in other proceedings, 13/ do

not reflect a genuine factual dispute, but rather a policy perspective substantially in conflict with DOE policy to promote competition in the public interest. On the issue of need, for example, Producers essentially request DOE to abandon its policy of relying on commercial parties to negotiate competitive

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13/ See, e.g., Brooklyn Union, supra; ANR Pipeline Company,

1 ERA 70,748 (1988); and Minnegasco, Inc., 1 ERA 70,721  

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(1988).



arrangements, from which, if not rebutted, need is presumed. Accordingly, DOE has determined it would not be in the public interest to hold additional procedures and Producers' request for discovery and a trial-type hearing is therefore denied.

In conclusion, Producers have not made any arguments or submitted any evidence sufficient to rebut applicants' assertion this import continues to be consistent with section 3 of the NGA and DOE's natural gas import policy guidelines. After taking into consideration all of the information in the record of this proceeding, I find that transferring Northwest's import authorization to Cascade, Northwest Natural, Washington Natural, and Water Power is not inconsistent with the public interest. 14/

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ORDER

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

A. The authorization granted Northwest Pipeline Corporation (Northwest) on February 7, 1990, in DOE/FE Opinion and Order No. 383 to import at Kingsgate, British Columbia, up to 152,000 Mcf per day of Canadian natural gas pursuant to the

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14/ Because the proposed import/export 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 neither an environmental impact statement nor environmental

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assessment is required. See 40 CFR 1508.4 and 57 F.R. 15122  
— (April 24, 1992).

Kingsgate Gas Sales Agreement dated September 23, 1960, as amended, is hereby transferred to Cascade Natural Gas Company (Cascade), Northwest Natural Gas Company (Northwest Natural), Washington Natural Gas Company (Washington Natural), and The Washington Water Power Company (Water Power).

B. The transfer will provide each transferee with an import authorization corresponding to the volumes of natural gas supplied by Canadian Hydrocarbons Marketing Inc. to be assumed under their respective Assignment Agreements with Northwest, as follows: Cascade - 33,210 Mcf per day, Northwest Natural - 3,832 Mcf per day, Washington Natural - 95,798 Mcf per day, and Water Power - 19,160 Mcf per day.

C. Within two weeks after deliveries begin, Cascade, Northwest Natural, Washington Natural, and Water Power shall individually notify the Office of Fuels Programs, Fossil Energy, Room 3F-056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in writing of the date that their first delivery of natural gas authorized in Ordering Paragraph A above occurs.

D. With respect to the natural gas imports authorized by this order, Cascade, Northwest Natural, Washington Natural, and Water Power shall individually file with the Office of Fuels Programs, within 30 days following each calendar quarter, quarterly reports indicating whether imports of natural gas have been made, and if so, giving by month, the total volume of the

imports in Mcf and the average price per MMBtu at the international border. The monthly price information shall itemize separately the demand and commodity charges on a monthly and per unit (MMBtu) basis. If no imports have been made, a report of "no activity" for that calendar quarter must be filed.

E. The first quarterly report required by Ordering Paragraph D is due not later than October 30, 1992, and shall cover the period from the date of this order until the end of the current calendar quarter of September 30, 1992.

F. The motions to intervene, as set forth in the Opinion and Order are hereby granted, provided that their participation shall be limited to matters specifically set forth in their motions to intervene and not herein denied, and that admission of these intervenors shall not be construed as recognition that they are aggrieved because of any order issued in this proceeding.

G. The request of the Independent Petroleum Association of American and the State Producer Associations for dismissal of this application and their alternative request for a trial-type hearing and discovery procedures is denied.

Issued in Washington, D.C., on September 9, 1992.

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