Cited as "1 ERA Para. 70,525"

Border Gas, Incorporated (ERA Docket No. 79-31-NG), December 23, 1980.

Amendment to Previous Orders by Deleting Conditions

[Opinion and Order]

I. Summary

The Economic Regulatory Administration (ERA) amends Opinion and Order No. 16A which conditionally authorized the importation of Mexican natural gas, by eliminating further conditions.

We find that these Mexican imports are secure sources of supplemental natural gas and that no over-dependence exists. Moreover, because of the minimal volumes involved and the fact that they are dispersed among six interstate pipelines, the record does not support requiring any modifications to the purchase contracts or to the terms under which the natural gas is imported and distributed.

II. Background

On May 15, 1980, ERA issued Opinion and Order No. 16A, conditionally approving the continued importation of 300 MMcf of Mexican natural gas per day under the existing contract between Border Gas, Inc. (a consortium of six U.S. pipelines), and Petroleos Mexicanos (Pemex) at the higher of either the current Canadian border price of $4.47 per MMBtu or the price determined pursuant to the escalation clause in Border's contract with Pemex.1/ The authorization in Opinion and Order No. 16A was based upon a finding that the border price of $4.47 per MMBtu was competitive with the costs of alternative fuels. On the same date, ERA issued Opinion and Order No. 14B,2/ conditionally approving certain flowing Canadian gas imports upon essentially the same terms and findings. In each of these opinions, ERA ordered further proceedings to determine whether Mexican and Canadian natural gas import authorizations should be conditioned to reduce possible unnecessary or uneconomic dependence on natural gas imports.

On June 17, 1980, ERA held a prehearing conference to determine what issues relating to the authorization of Mexican natural gas imports by Border Gas in ERA Docket No. 79-31-NG required further examination and whether evidentiary hearings were required to resolve those issues. In a Prehearing

Order dated August 1, 1980, ERA requested further discussion of numerous issues, including:

a. the economic and supply considerations associated with both current and prospective imports of Mexican natural gas;

b. take-or-pay obligations;

c. the need for contingency plans; and

d. alternative marketing and pricing mechanisms.

III. Summary of Comments

The Office of Pipeline and Producer Regulations (OPPR) of the Federal Energy Regulatory Commission (FERC), United Gas Pipe Line Company (United), Southern California Gas Company (SoCal), the Public Service Commission of the State of New York and the applicant filed comments in response to the Prehearing Order. The Process Gas Consumers Group (PGCG), a group of industrial gas consumers, refiled its comments submitted in the Canadian natural gas import case,3/ stating that many of the issues raised in the present proceeding are similar to those raised in the Canadian natural gas import cases. Border and United filed rebuttal comments too.

The FERC's OPPR stated that dependence and supply considerations in the present proceeding are not as significant as with Canadian natural gas imports because current deliveries from Mexico make up a very small portion of the total gas supply of each of the six purchasing pipelines. Concerning the take-or-pay issue, OPPR stated that take-or-pay obligations of U.S. importers should be limited because to impose them where the markets are unable to absorb the high cost of gas would result in a greater burden on consumers. Rather than the present commodity-cost-related take-or-pay formulas that escalate with each increase of the border price, OPPR favored the calculation of take-or-pay revenues at a fixed rate to recover the seller's investment for fixed costs associated with the export. If ERA cannot establish an appropriate fixed rate, OPPR suggested that the take-or-pay obligation should be based on a cost-of-service flow-through of the Mexican supplier's minimum costs.

OPPR favored the adoption of a contingency plan, with respect to any new proposals to import gas from Mexico. The only commenter favoring the proposal for a separate FERC rate schedule to show the true cost of imported gas to those who use it, OPPR expressed the view that such an approach would accomplish most of the goals envisioned for a targeted direct purchase by

end-users, yet preserve the position of the pipelines as marketers of natural gas.

United expressed the belief that Mexican gas imports provide a secure and needed source of imported energy, but emphasized that this proceeding is limited to the authorized volumes of 300 million cubic feet per day and does not address additional quantities that might be made available by Mexico at a later date. It did not comment on the take-or-pay issue, but opposed contingency planning, direct sales and separate rate schedules, stating that "creation of separate gas supplies dedicated to individual users reduces overall gas supply reliability and penalizes small high-priority customers unable either to support a gas acquisition effort or to take gas at the high load factor necessary to participate in such a project."

SoCal agreed with Border, PGCG and United that Mexican gas imports provide a secure and needed source of imported energy. It supported the concept that U.S. markets should not be required to purchase either Canadian or Mexican gas at a price in excess mf the commodity value in the marketplace. It urged the governments of the U.S. and Mexico to determine a regulatory methodology that will adequately protect the interests on both sides of the border and ensure the most favorable economic utilization of gas in the marketplace.

The PGCG refiled its comments submitted in the Canadian natural gas import case, stating that many of the issues raised in the present proceeding are similar to those raised in the Canadian case and cautioning that no imports are likely to be as secure, reliable and economic as domestic supplies. It favored a fixed dollar limitation on take-or-pay clauses and coordinated contingency planning to prepare for possible emergencies arising from import disruptions. It opposed a requirement for direct purchases by distributors as impractical to implement, highly discriminatory, and in hindrance of economic consumption and conservation patterns.

The New York Public Service Commission commented only on the issues of contingency planning and a separate rate schedule, expressing the view that the present proceeding, involving small quantities of natural gas, is not the proper context for grappling with considerations which involve national policy as a whole.

The applicant, Border, stated that ERA's concern with Mexican imports is entirely misplaced. "Simply put, there is no over-dependence on Mexican volumes by any of Border's pipeline purchasers. Thus no rational reason exists for imposing further conditions upon Border's import authorization at this

time . . . ." To illustrate its point, Border stated that the imported volumes of Mexican gas are resold to six major interstate pipelines and constitute a minimal portion only--ranging from 1.2 percent to 3.5 percent--of the total system supplies of the pipeline purchasers.

Concerning security of supply considerations, Border cited several ERA import decisions and miscellaneous published reports to prove that Mexican imports can be viewed as one of the most secure supply sources for the U.S.--especially since the alternative is greater reliance on OPEC oil. Border added that the evidence of security of supply is further enhanced by stable trade relations between the U.S. and Mexico. The U.S. is Mexico's largest trading partner and it is quite conceivable, according to Border, that Mexico may become the largest trading partner of the U.S.

Border saw no reason for ERA to condition the Mexican import authorization to limit Border's take-or-pay obligation. It emphasized that the Canadian imports, with take-or-pay obligations of 75 percent and higher, are materially different from the Border obligation to take only 60 percent of the total volumes tendered by Pemex for export. In addition, Border argued that ERA's proposal to place a fixed dollar "cap'% on Border's take-or-pay obligation is inconsistent with the framework of the original government-to-government agreement underlying the gas import from Mexico and thus might disrupt U.S.-Mexican relations.

Border rejected the contingency plan proposed by ERA as neither necessary nor feasible. It considered gas imports as "contingency" supplies offsetting domestic shortfalls rather than vice versa. Border also stated that the wide dispersal of the present imports of 300 MMcf per day ensures that an eventual interruption could be readily absorbed.

Like United and the Public Service Commission of the State of New York, Border voiced strong opposition to direct sales and separate rate schedules. It argued that the direct purchase proposal would result in discrimination against small distribution customers and end-users who will need the supplies in the future but, at the same time, lack the operational flexibility or resources to contract for such volumes directly. In addition, the separate rate schedule proposal could produce precisely the opposite result than that intended--namely the creation of an acute dependency situation among those individual distributors or end-users who might agree to purchase such volumes under a separate pate schedule. According to @order, implementation of such a scheme would trade the margin of safety provided by the present wide dispersal of Mexican volumes throughout the system for a program that could result in pockets of individual overreliance on one supply source.

The essence of Border's comments was that because the commenters agree that no over-dependence exists with respect to Mexican imports, there is no basis for imposing further conditions on Border's existing import authorization.

No party requested an oral argument or evidentiary hearing, and Border stated that further proceedings would not contribute materially to ERA's resolution of these issues.

IV. Decision

This Opinion and Order amends Opinion and Order No. 16A, as subsequently amended by Order dated June 19, 1980, by removing ordering language which would have allowed ERA to impose further conditions to the authorization to import 300 MMcf of natural gas per day at the higher of the contract price or $4.47 per MMBtu. After completion of the further proceedings ordered by Paragraph B of Opinion and Order No. 16A, we have determined that no reason exists at this time to impose further conditions upon Border's present authorization.

Our decision rests on the finding that Mexican natural gas imports are secure sources of supplemental supplies and that no over-dependence exists at this time.

a. Economic and Supply Considerations

Based on the comments received, ERA has found no reason to doubt that Mexican gas imports presently authorized provide a secure source of imported energy. Furthermore, the dependence and supply considerations in this case are not as significant as with Canadian natural gas imports because the current deliveries from Mexico of 300 MMcf per day amount to only about 0.5 percent of the total U.S. natural gas consumption. Canadian volumes, as authorized, make up almost 7 percent. Furthermore, the Mexican gas is only a small portion of the total gas supply of each of the six interstate pipelines in the Border consortium. Thus, there is no over-dependence on volumes of Mexican gas presently authorized.

b. Take-Or-Pay

Upon examining this issue in light of the comments, ERA has concluded that, at present, there is no reason to limit the take-or-pay provisions of the Border/Pemex Gas Purchase Contract because of the low volumes at issue and the fact that they are spread among six major pipelines. Furthermore, the

take-or-pay provisions of the Border/Pemex contract have never been invoked and, according to Border, there is no reason to believe that they would be invoked in the foreseeable future.

c. Contingency Plan

The record does not support requiring Border to develop contingency plans designating domestic production to offset interruption of Mexican imports. The wide dispersal of the present imports of 300 MMcf per day should ensure that any interruption could be readily absorbed. As with the other issues, however, ERA reserves the right to reexamine this issue if additional volumes are tendered in the future by Pemex.

d. Direct Sales and Separate Rate Schedule

ERA agrees with the majority of commenters that the proposal for direct sales to end-users or a separate FERC-rate schedule for Mexican gas should not be adopted at this time. The quantities of gas involved in this case are not sufficient to warrant the extensive modifications in natural gas sales arrangements that the proposals would require.

Order

For the reasons set forth above, ERA hereby orders that:

A. Pursuant to authority under Section 3 of the Natural Gas Act, Ordering Paragraph A of Opinion and Order No. 16A, as amended by Order dated June 19, 1980, is hereby further amended to delete the last sentence, which reads

"[t]his authorization is subject to such conditions as shall be prescribed pursuant to Ordering Paragraph B mf this Order."

B. The petition for leave to intervene out of time of the Process Gas Consumers Group is hereby granted subject to such rules of practice and procedure as may be in effect, provided that its participation shall be limited to matters affecting asserted rights and interests specifically set forth in its petition for leave to intervene, that the admission of such intervenor shall not be construed as recognition by ERA that it might be aggrieved because of any order issued by ERA in this proceeding, and that such intervenor agrees to accept the record as it now stands.

Issued in Washington, D. C. on December 23, 1980.

--Footnotes--

1/ See DOE/ERA Opinion and Order 16A issued on May 15, 1980, in ERA Docket No. 79-31-NG, Border Gas, Inc. (1 ERA Para. 70,511 Federal Energy Guidelines).

2/ See DOE/ERA Opinion and Order 14B, issued on May 15, 1980, in ERA Docket Nos. 80-01-NG, et al., Inter-City Minnesota Pipelines Ltd., Inc., et al. (1 ERA Para. 70,508 Federal Energy Guidelines).

3/ Comments of the Process Gas Consumers Group dated August 22, 1980, in ERA Docket No. 80-01-NG, Inter-City Minnesota Pipelines Ltd., Inc. On September 8, 1980, the PGCG filed a Petition for Leave to Intervene Out of Time in this proceeding. Based on our finding that PGCG has an interest in the outcome of this case, that this interest is not otherwise represented, and in the absence of any opposition, ERA is granting intervention.