Cited as "1 ERA Para. 70,614"

Michigan Consolidated Gas Company (ERA Docket No. 85-27-NG), December 20, 1985.

DOE/ERA Opinion and Order No. 96

Order Granting Authorization to Import Natural Gas from Canada

I. Background

On November 1, 1985, Michigan Consolidated Gas Company (MichCon) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act (NGA), for an authorization to import on an interruptible basis up to 13,000 Mcf per day of Canadian natural gas pursuant to exchange agreements with Esso Chemical Canada (ECC), a Division of Imperial Oil Limited (Imperial), and Shell Western E&P Inc. (Shell) for a period of three years from the date of initial delivery, and automatically renewable thereafter. The gas, to be purchased by Imperial from TransCanada Pipelines Limited (TransCanada), will be transported from the point of importation at the U.S.-Canadian boundary near Emerson, Manitoba, to Belle River Mills, Michigan, by TransCanada through Great Lakes Transmission Company (Great Lakes) facilities. At Belle River Mills, the gas will be delivered to MichCon for use in its distribution system.

The proposed import of natural gas by MichCon, a Michigan corporation with its principal place of business in Detroit, represents part of a proposed energy exchange, on an equivalent Btu basis, of natural gas for ethane gas that is currently being sold by Shell to MichCon. Historically, ethane was removed by Shell at its extraction facilities at Kalkaska, Michigan, and was eventually exported for use as a primary feedstock for a petrochemical plant operated by Imperial's EEC Division at Sarnia, Ontario. In April 1985, however, Shell notified MichCon that it no longer could market this ethane and that it would leave the ethane in the gas that it supplied to MichCon. The proposed exchange will enable Shell to restart its existing extraction facility at Kalkaska, Michigan, to remove ethane from the natural gas sold to MichCon.

The high level of ethane in the gas results in a significantly higher Btu content when compared to MichCon's other sources of supply. This has caused operational problems for MichCon in trying to provide a relatively stable Btu quality gas to its customers, especially those that require a stable Btu content for their industrial processes. In addition, at times, a

higher concentration of mercaptan sulfur remains with the ethane in the gas and causes an increase in the level of leak complaints, particularly during fringe heating season months.

To correct the operational problems, MichCon entered into agreements with ECC and Shell which would allow Shell to market the ethane. The ethane extracted by Shell at Kalkaska, Michigan, would be delivered to ECC which would then return an equivalent amount of energy in the form of natural gas to MichCon. Great Lakes would deliver the natural gas to MichCon at its existing delivery point at Belle River Mills. The extracted ethane would be transported through Shell's existing natural gas liquids pipeline to Marysville, Michigan, and then exported by Dome Petroleum Corp.

The proposed import of natural gas would make use of existing facilities and, therefore, would have no adverse environmental impact. The energy exchange agreement between MichCon and ECC and the gas supply agreement between MichCon and Shell are on an interruptible basis to utilize spare pipeline capacity. Although the term of each agreement is three years, and automatically renewable thereafter, the agreements may be suspended on 30-days notice by either party.

In support of its application, MichCon states that the proposed import of natural gas is not inconsistent with the public interest, because the resulting substitution of natural gas for ethane will allow MichCon to overcome operational problems and provide a more uniform quality of gas to its customers.

II. Procedural History

Notice of MichCon's application was issued on November 15, 1985, inviting motions to intervene, notices of intervention, or comments to be filed by December 10, 1985.1/ TransCanada filed a motion to intervene and requested expeditious approval of MichCon's application to import Canadian natural gas. The Panhandle Producers and Royalty Owners Association, et al.2/ (PPROA) filed a motion to intervene and opposed the application. PPROA also requested a trial-type hearing. This order grants intervention to all parties.

III. Decision

The MichCon application has been reviewed to determine if it conforms with Section 3 of the NGA. Under Section 3, the Administrator shall issue an order authorizing an import unless there is a finding that the import "will not be consistent with the public interest." 3/ In making this finding, the

Administrator is guided by the DOE policy guidelines for natural gas imports.4/ Under this policy, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

No single element of an import arrangement determines its competitiveness. Rather, each arrangement is considered in its entirety. Here, the arrangement is an energy exchange, on an equivalent Btu basis, of natural gas and ethane gas, freely negotiated by the participating parties. The volumes of natural gas will be imported on an interruptible basis, through existing facilities,5/ under a three-year authorization which MichCon may seek to have extended prior to its termination. The purpose of the arrangement is to facilitate an energy exchange which in turn will allow MichCon to overcome operational problems resulting from too high a level of ethane in gas currently being purchased from Shell.

The ERA has carefully reviewed PPROA's request for a trial-type hearing and decided it should be denied. PPROA has failed to identify, in accordance with the ERA's procedural rules, material and relevant factual issues genuinely in dispute and has failed to demonstrate that such a hearing is necessary for the ERA to make a decision on this application. PPROA claims that MichCon failed to file probative and reliable evidence demonstrating a need for imported Canadian gas. We disagree with this claim. Need is a function of competitiveness. An agreement reached by private parties is presumed to be competitive unless it is demonstrated to be otherwise. PPROA's statement, even if it is accepted as true, that its members could supply the gas MichCon seeks to import at competitive prices, does not rebut this presumption. PPROA bears the burden of proof associated with this presumption and has failed to demonstrate the necessity for a trial-type hearing. PPROA has also failed to show that the agreement reached by the parties is not competitive and is therefore inconsistent with the public interest.

After taking into consideration all information in the record of this proceeding, I find that the authorization requested by MichCon is not inconsistent with the public interest and should be granted.

Order

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

A. Michigan Consolidated Gas Company (MichCon) is authorized to import up to 13,000 Mcf per day of Canadian natural gas during a three-year period

beginning on the date of first delivery, pursuant to the provisions of the energy exchange agreements with Esso Chemical Canada and Shell Western E&P Inc. for the exchange, on an equivalent Btu basis, of natural gas for ethane, submitted as part of the application in this docket.

B. MichCon shall notify the ERA in writing of the date of first delivery within two weeks after deliveries begin.

C. MichCon shall file with the ERA in the month following each calendar quarter, quarterly reports showing, by month, the quantities of natural gas imported under this authorization.

D. The request for a trial-type hearing made by Panhandle Producers and Royalty Owners Association, et al., is hereby denied.

E. The motions to intervene, as set forth in this Opinion and Order, are hereby granted, subject to the administrative procedures in 10 CFR Part 590, provided that participation of the intervenors shall be limited to matters specifically set forth in their motions to intervene and not herein specifically denied, and that the admission of such intervenors shall not be construed as recognition that they might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., in December 20, 1985.

--Footnotes--

1/ 50 FR 48467, November 25, 1985.

2/ PPROA includes the Panhandle Producers and Royalty Owners Association, the West Central Texas Oil and Gas Association, the North Texas Oil and Gas Association and the East Texas Producers and Royalty Owners Association.

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

4/ 49 FR 6684, February 22, 1984.

5/ Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application clearly is not a 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 of environmental

assessment is not required.