Cited as "1 ERA Para. 70,734"

Natural Gas Pipeline Company of America (ERA Docket No. 86-60-NG), October 30, 1987.

DOE/ERA Opinion and Order No. 203

Order Approving Amendments to an Authorization to Import Natural Gas from Canada

I. Background

On November 13, 1986, Natural Gas Pipeline Company of America (Natural) 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), to amend an existing natural gas import authorization granted by the ERA on May 15, 1986, in DOE/ERA Opinion and Order No. 124 (Order 124).1/ Order 124 authorized Natural to import up to 75,000 Mcf of Canadian natural gas per day from ProGas Limited (ProGas) of Calgary, Alberta, Canada, through October 31, 1987; approved amendments that allowed for the passthrough of its two-part demand/commodity rate structure on an as-billed basis; and eliminated annual take-or-pay requirements. The current application requests the ERA to extend Natural's authorization seven years to allow it to continue importing up to 75,000 Mcf gas per day through October 31, 1994, and to approve certain pricing amendments based on an amending agreement between Natural and ProGas dated February 1, 1986.

Under a May 17, 1979, agreement, the volumes which Natural imports from ProGas are transported through the eastern leg of the prebuilt portion of the Alaska Natural Gas Transportation System (ANGTS) to a point near Port of Morgan, Montana, and are delivered to Natural through the facilities of Northern Border Pipeline Company (Northern Border) and Northern Natural Pipeline Company (Northern). Natural states that no new or additional facilities would be required to import the gas should its application be granted.

Natural seeks approval of a February 1, 1986, amending agreement with ProGas which would extend the term of its present authorization for seven years and modify the pricing provisions approved in Order 124 that expire on October 31, 1987. Natural states that the pricing amendments contained in the February agreement will allow gas supplied under this import arrangement to be more competitive and that the new amendments will supersede all previously approved contract amendments for ProGas' sales.

According to Natural, the new amendments would modify the current two-part demand/commodity pricing structure by lowering the base commodity charge from $2.50 per MMBtu to $1.89 per MMBtu for the first 50 percent of daily contract quantities. At the 50-55 percent of daily contract quantity level, the commodity rate would decline to $1.85 per MMBtu; to $1.81 per MMBtu at the 55-60 percent level; to $1.77 per MMBtu at the 60-65 percent level; to $1.73 per MMBtu at the 65-70 percent level; and to $1.69 per MMBtu at the 70-75 percent level. The commodity rate for takes above 75 percent of daily contract quantities would increase to $2.25 per MMBtu. The existing monthly demand charge would remain at $15.21 per Mcf subject to semi-annual adjustment (upward or downward) based on a combination of toll charges as determined by the Canadian National Energy Board (NEB), the Government of the Province of Alberta, and the Alberta Petroleum Marketing Commission. Approval of the proposed pricing amendments would result in a delivered price to Natural of $2.19 to $2.75 per MMBtu of gas, depending on the percent of daily contract quantities taken by Natural, compared to a base commodity price that ranged from $2.50 to $2.60 per MMBtu under the previous agreement.

Natural asserts that under the proposed amendments the commodity portion of ProGas' rates would be redetermined based on changes in the price of natural gas and alternate fuels in its market area, and either Natural or ProGas could request semi-annual renegotiation of all the pricing terms of the contract, including both the demand and commodity charge. If either Natural or ProGas are unable to agree upon such pricing terms, either party has the right to refer the matter to arbitration. The February 1, 1986, amending agreement also provides for the purchase of ProGas volumes on a pro rata basis with Natural's purchase of comparably priced domestic volumes. In any circumstances where Natural's overall need for gas declines, the purchase of ProGas volumes would be reduced in a manner comparable to the reduction in purchases of similarly priced domestic volumes.

In support of its application, Natural submits that Canadian gas supplies are an integral part of its total system supply of gas and continuation of the ProGas volumes under the amended sales agreement is essential for meeting existing customer demand.

In addition, Natural asserts that the proposed amendment meets the DOE's natural gas import policy guidelines2/ because it (1) provides sufficient flexibility to permit pricing and volume adjustments as required by market conditions and available competing fuels including domestic natural gas; (2) contains provisions that will ensure the imported gas remains competitive in Natural's markets over the life of the amended sales agreement; and (3) contains price renegotiation provisions that will permit contractual price

adjustments in the event of changed circumstances.

Natural states that, in light of ProGas' record of providing a reliable gas supply under the existing import authorization, these import volumes are both secure and reliable. Finally, because the amending agreement provides for a competitive price over the term of the agreement, Natural maintains that the ProGas volumes will continue to be needed to meet its system requirements.

II. Intervention and Comments

The ERA issued a notice of the application on December 18, 1986, inviting protests, motions to intervene, or comments to be filed by January 20, 1987.3/ The ERA received five motions to intervene and comments without a motion to intervene from ProGas. Foothills Pipe Lines (Yukon) Ltd. (Foothills) also made comments on the application. The four remaining intervenors did not comment on the application and requested no additional procedures. On January 23, 1987, ProGas requested that it be granted intervention. No delay to the proceeding nor prejudice to any party will result with regard to this late filing. Therefore, the late filing is accepted and this order grants intervention to all six movants.4/

ProGas filed comments in support of the application stating that the February amending agreement contemplates that the price of gas it sells to Natural will reflect the prices of competing energy sources including gas in Natural's market, that the agreement provides for graduated decreases in commodity prices, and that the pro rata purchase obligations place it on an equal, but not favored, footing with comparable domestic supplies. Foothills submits that the agreement is competitive and complies fully with the DOE's import policy guidelines.

III. Decision

Natural's application has been reviewed to determine if it conforms with Section 3 of the NGA. Under Section 3, an import must be authorized unless there has been a finding that the import "will not be consistent with the public interest."5/ In making this finding, the ERA Administrator is guided by the DOE's natural gas import policy guidelines.6/ Under this policy, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test. Under a long-term import proposal, need for the gas supply and security of supply are also important considerations.

The thrust of the policy guidelines is to promote competition in the

natural gas marketplace by allowing commercial parties to negotiate freely their own trade arrangements with minimal government interference. Under the policy guidelines an import will generally be deemed to be competitive if the terms and conditions of the gas purchase contract provide a supply of gas that the importer can market competitively over the term of the contract. The policy guidelines further state that if the imported gas is competitive and will remain so throughout the term of the contract, a rebuttable presumption exists that the gas is needed in the market. Moreover, the policy guidelines provide that the competitiveness of an import arrangement will not be assessed by a narrow inquiry into individual contract terms but rather a consideration of the whole fabric of the arrangement. Those opposing the import have to show that the arrangement, as a whole, is not competitive or sufficiently flexible to respond to changing market conditions.7/

This proceeding involves the uncontested amendment of the pricing and related provisions of an existing arrangement and a seven-year extension of the authorization for that arrangement. The principal issue is whether, if extended as amended, the currently authorized import arrangement will continue to be competitive and market-responsive under the renegotiated contract terms over the proposed seven-year term.

The Natural/ProGas agreement, as set forth in the application, is consistent with the policy guidelines. It has been structured to reflect current and future competitive conditions in Natural's markets so that Natural will have a source of competitively priced natural gas for its system supply over the life of the contract. Specifically, the amendment contains a pricing formula which automatically adjusts the commodity charge to reflect the price of competing fuels and provides for a gradual decrease in the commodity charge based on increased purchases of the contract demand quantity. The amendment also contains a semi-annual price redetermination clause and an arbitration provision. The agreement incorporates no rigid take-or-pay provisions and instead provides that the ProGas volumes will be taken on a pro rata basis with Natural's purchase of comparably priced domestic volumes. Together these contractual provisions assure that Natural will have available to it competitively priced gas for its system supply that will remain, because of the flexibility of the arrangement, marketable over the extended term of the arrangement.

Need for this gas and security of supply are not disputed issues in this proceeding. The marketability of the gas supply gives rise to a presumption of need. Moreover, the gas provided under this arrangement is a part of Natural's long-term general system supply and is essential if Natural is to meet its customer demand. The security of the gas supply is assured both by the

historic reliability of this source of Canadian natural gas and by the fact that ProGas has contracted to purchase appropriate volumes of gas from producers in the Province of Alberta to support its obligations under the arrangements. Thus, the arrangement provides for a secure source of natural gas that is needed by Natural.

After reviewing the record in this case, I conclude that an extension of the import arrangement under the terms renegotiated by Natural and ProGas will serve the interests of consumers in continuing a long-term, reliable supply of natural gas on competitive, market-responsive terms. Additionally, the proposed import arrangement furthers the policy of reducing trade barriers and encouraging market forces to achieve a more rational and competitive distribution of goods between the U.S. and Canada. For these reasons, I find that extension of the authorization and approval of the pricing provisions requested by Natural are not inconsistent with the public interest and should be granted.8/

ORDER

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

A. DOE/ERA Opinion and Order No. 124, issued to Natural Gas Pipeline Company of America (Natural) on May 15, 1986, is hereby amended to extend the term until October 31, 1994, in accordance with the provisions of the February 1, 1986, letter of agreement between Natural and its Canadian supplier, ProGas Limited, submitted as part of the application filed by Natural on November 13, 1986.

B. Natural shall file with the ERA within 30 days following each calendar quarter, quarterly reports showing by month, the quantities of natural gas in MMcf imported under this authorization, and the average price showing the demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis paid for those volumes at the international border. The volume and price information shall distinguish between firm and interruptible sales, and all price information shall identify demand and commodity charges on a monthly and per unit (MMBtu) basis.

C. The motions to intervene, as set forth in this Opinion and Order, are hereby granted, 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., October 30, 1987.

--Footnotes--

1/ 1 ERA Para. 70,645.

2/ 49 FR 6689, February 22, 1984.

3/ 51 FR 45390, December 18, 1986.

4/ The intervenors are:

(1) Foothills Pipe Lines (Yukon) Limited

(2) Texas Eastern Transmission Corporation

(3) Northern Natural Gas Company

(4) Iowa-Illinois Gas and Electric Company

(5) Iowa Public Service Company

(6) ProGas Limited

5/ 15 U.S.C. Sec. 717(b).

6/ See supra note 2.

7/ Id., at 6689.

8/ The DOE has determined that because existing pipeline facilities will be used and no new construction is being undertaken for this import, granting this application clearly 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.