Cited as "1 ERA Para. 70,825"

Union Gas Limited (ERA Docket No. 88-30-NG), November 22, 1988.

DOE/ERA Opinion and Order No. 283

Order Granting Blanket Authorization to Import and Export Natural Gas from and to Canada and Granting Intervention

I. Background

On May 9, 1988, Union Gas Limited (Union) 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 blanket authority to export up to 250 Bcf of natural gas to Canada and to import for export back to Canada up to 100 Bcf of natural gas on a short-term, spot market basis over a period of two years beginning on the date of first import or export.

Union, a Canadian corporation, is a local gas distribution company that serves customers within the Province of Ontario. The requested authorization would permit Union to export U.S. natural gas or import Canadian gas for re-export back to Canada, in both cases under short-term or spot agreements, for sale as system supply. The applicant requests that it be permitted to import and export natural gas for its own account, as well as for the accounts of suppliers or marketers participating in a particular transaction. The terms of each arrangement would be negotiated in response to market conditions. Union states that all transactions contemplated by its proposal will utilize existing pipeline facilities in the U.S. and Canada, and thus contemplates no construction of new facilities to implement the proposed import or export. In addition, Union has stated its intention to comply with ERA's reporting requirements.

In support of its application, Union asserts that current excess domestic gas supplies evidence a lack of need for this gas to service regional and national markets. It further asserts that this export arrangement would promote competition and have a beneficial impact on the balance of trade. In addition, Union asserts that its proposal will reduce per-unit transportation costs on affected U.S. pipelines.

II. Interventions and Comments

The ERA issued a notice of the application on June 9, 1988, inviting protests, motions to intervene, notices of intervention and comments to be

filed by July 18, 1988.1/ A motion to intervene was filed by TransCanada Pipelines Limited (TransCanada). This order grants intervention to this movant.

TransCanada, does not oppose the application, but requests imposition of several conditions on a grant of import/export authority. According to TransCanada, Union and Michigan Consolidated Gas Company (MichCon), a local distribution company, plan to build a three-mile pipeline across the U.S./Canadian border under the St. Clair River in southeastern Michigan to connect Union's existing pipeline facilities directly to MichCon's underground gas storage facilities.2/ MichCon filed an application before the Federal Energy Regulatory Commission (FERC) on June 13, 1988, pending in Docket Nos. CP88-464-000 and CP88-509-000, for a Presidential Permit authorizing the construction and operation of the new pipeline.3/ TransCanada is concerned that the blanket authority requested by Union may be used to cover transactions utilizing the proposed St. Clair pipeline without prior environmental review of those facilities by the ERA. Thus, TransCanada requests that the ERA attach three conditions to any authorization granted to Union that would (1) require any gas imported or exported under the blanket authorization to be transported only through pipeline facilities that exist on the date Union filed its application in this docket; (2) specifically prohibit the use of the St. Clair pipeline for this gas; and (3) require Union to obtain a separate ERA authorization to import or export gas by means of the St. Clair pipeline.

On August 2, 1988, Union filed a response in opposition to TransCanada's request for conditions. Union reiterated that the proposed imports and exports would take place without using new facilities and has filed a separate blanket application with the ERA to cover gas transported through the proposed St. Clair pipeline.4/ Nevertheless, Union contends that the volumes associated with this proposal should not be precluded from transport through new facilities. Union points out that pursuant to the NGA and Delegation Order No. 0204-112 the FERC has jurisdiction over the siting, construction, and operation of new domestic facilities including those associated with authorizations under Section 3 of the NGA, and that the environmental impacts associated with construction are reviewed by the FERC during its permitting process. Union maintains that it would be consistent with DOE policy to allow holders of blanket import and export authorizations the flexibility to utilize newly constructed facilities that have undergone an environmental analysis as a prerequisite to FERC authorization.

III. Decision

The application filed by Union has been evaluated to determine if the

proposed import/export arrangement meets the public interest requirements of Section 3 of the NGA. Under Section 3, an import or export must be authorized unless there is a finding that it "will not be consistent with the public interest." 5/ The Administrator is guided by the DOE's natural gas import policy guidelines.6/ Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test. DOE Delegation Order No. 0204-111 7/ directs the ERA, in reviewing a natural gas export application, to consider the domestic need for the gas to be exported, and any other issues determined by the Administrator to be appropriate in a particular case.

Union's proposed arrangement for importing and exporting gas, as set forth in the application, is consistent with Section 3 of the NGA and DOE's international gas trade policy. We emphasize initially that the competitiveness of the import volumes is not an issue in this proceeding because the volumes contemplated for import would be redelivered to Canada for Union's own system supply and would not be sold to U.S. consumers. With respect to the proposed export, the current gas surplus in the United States and the short-term nature of the requested export authority protect against the possibility that a national or regional need for the gas will develop in the near term. In addition, as Union points out, any exports of United States gas will benefit producing regions with tax and related revenues, will benefit U.S. transporters by reducing the per unit cost of transmission, and will reduce the U.S. trade deficit. The ERA also finds that Union's import/export proposal will advance the policy goals of reducing trade barriers and encouraging the use of market forces to achieve a more competitive and efficient distribution of goods between the U.S. and Canada.

TransCanada, a current gas supplier to Union, has requested that the ERA impose on any authorization issued to Union several conditions related to the proposed St. Clair pipeline. Its concerns, TransCanada says, arise from the interdependence it believes exists between Union's application and the proposed St. Clair facility. TransCanada asserts that Union has mischaracterized both its blanket proposal and the need for environmental review. The conditions would require that gas imported or exported under the requested authorization be transported only on pipelines existing as of the date of Union's application, and specifically would preclude use of the St. Clair line. Should Union seek to import or export gas over new facilities, a third condition would require Union to obtain separate authorization.

For the reasons discussed below, the ERA has determined that the conditions requested by TransCanada are not in the public interest and are therefore denied. First, the St. Clair pipeline is not a part of Union's

proposal in this proceeding. In addition, Union stated in its August 2 filing it intends to use the blanket authority to engage in "transactions beyond those envisioned by the construction" of the St. Clair interconnection and this is a completely viable proposal since facilities currently exist to implement this import/export of gas. We do not find that the applicant's blanket proposal and the St. Clair facility are interdependent.

Second, we reject TransCanada's argument suggesting that the environmental review process is circumvented unless the conditions are imposed as requested. Union proposes to use only existing facilities. In such cases, DOE has historically fulfilled its obligations under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., by preparing a Memorandum to the File concluding that issuance of the import authorization was clearly not a major Federal action significantly affecting the quality of the human environment. This procedure is provided for in the DOE guidelines (52 FR 47662, December 5, 1987) implementing the Council on Environmental Quality NEPA regulations (40 CFR 1501 et seq.). Such a Memorandum to the File was prepared for the Union application shortly after it was filed. Subsequently, DOE issued a proposed NEPA categorical exclusion, pursuant to 40 CFR 1508.4, for cases not involving new pipeline construction (see 53 F.R. 29934, August 9, 1988). Invoking the categorical exclusion in any particular case raises a rebuttable presumption that issuance of the import authorization is not a major Federal action under NEPA.

After the St. Clair line has been certified by the FERC and constructed, it will then be an "existing" facility within the meaning of the categorical exclusion. TransCanada's motion to intervene raises the question of how the categorical exclusion should be invoked for the coverage of the St. Clair line by the Union blanket authorization once the line is built.8/ TransCanada urges that Union should be required to file a new application to allow the use of an additional point of entry, even though no new quantities of gas would be approved as a result of the application. We disagree that such a cumbersome procedure is necessary merely to add an additional existing facility as a point of entry to a blanket authorization. Rather, we believe it would be appropriate for Union to file information pursuant to 10 CFR 590.407 notifying the ERA of changed circumstances if a new border facility becomes available and they propose to use it. ERA would then determine whether to invoke the categorical exclusion for its decision to accept the information as filed. Notice of this action, and of the rebuttable presumption it raises, would be given to the public. We believe that this approach is more consistent with the purposes and goals of a blanket authorization.

After taking into consideration all the information in the record of

this proceeding, I find that granting Union blanket authority to import up to 100 Bcf of Canadian natural gas and to export up to 250 Bcf of U.S. domestic natural gas to Canada during a term of two years is not inconsistent with the public interest.

ORDER

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

A. Union Gas Limited (Union) is authorized to import up to 100 Bcf of Canadian natural gas and to export to Canada up to 250 Bcf of domestic natural gas during a two-year period, beginning on the date of first delivery.

B. This natural gas may be imported or exported at any point on the international border where existing pipeline facilities are located.

C. Union shall notify the Economic Regulatory Administration (ERA) in writing of the date of first delivery of natural gas authorized in Ordering Paragraph A above within two weeks after import or export deliveries begin.

D. With respect to the imports and exports authorized by this Order, Union shall file with the ERA within 30 days following each calendar quarter, quarterly reports indicating whether sales of imported and/or exported natural gas have been made, and if so, giving, by month, the total volume in MMcf each of the exports and imports and the average price per MMBtu each at the international border. The reports shall also provide the details of each import or export transaction, including the names of the seller(s), points of entry or exit, market(s) served, and, if applicable, the per unit (MMBtu) demand/commodity charge breakdown of the price, any special contract price adjustment clauses, and any take-or-pay or make-up provisions.

E. The motion to intervene, as set forth in this Opinion and Order, is hereby granted, provided that participation of the intervenor shall be limited to matters specifically set forth in its motion to intervene and not herein specifically denied, and that admission of such intervenor shall not be construed as recognition that it might be aggrieved because of any order issued in these proceedings.

F. TransCanada's request for conditions is denied.

Issued in Washington, D.C., on November 22, 1988.

--Footnotes--

1/ 53 FR 22707, June 17, 1988.

2/ TransCanada has filed an application with the National Energy Board (NEB) to build 3.3 kilometers of pipeline parallel to its existing pipeline near Sarnia, Ontario as an alternative to the proposed St. Clair pipeline.

3/ The U.S. Army Corps of Engineers, Detroit District, issued a Joint Public Notice, 88-12-109B, on August 31, 1988, in accordance with Title 33 of the Code of Federal Regulation Parts 320-330, inviting comments on the proposed pipeline. MichCon has applied to the Corps of Engineers for a Federal permit under Section 10 of the River and Harbor Act of 1899 to bore a natural gas pipeline under the St. Clair River extending to the International Boundary Line. The proposed crossing would be comprised of a single 24-inch steel pipe placed in a tunnel bored under the river bed using a directionally drilled method. MichCon has applied to the St. Clair Board of Public Works, the Michigan Public Service Commission and the Michigan Department of Natural Resources for related authorizations.

4/ ERA Docket No. 88-44-NG.

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

6/ 49 FR 6684, February 22, 1984.

7/ 49 FR 6690, February 22, 1984.

8/ TransCanada's motion confuses two separate questions: how the environmental review for construction of the St. Clair line will be conducted, and the appropriate procedure for NEPA compliance when extending the coverage of Union's blanket authorization to the additional point of entry created by the line's completion. It is acknowledged that FERC certification will require a NEPA review of the construction of the new line. In addition, numerous other Federal, state and local approvals will be required, each with environmental concerns to be addressed. The inference is therefore incorrect that the line could be built without adequate environmental review unless TransCanada's conditions are imposed. The only question raised in this proceeding is how DOE should apply its NEPA procedures applicable to existing facilities (i.e., the categorical exclusion) when extending the coverage of a blanket authorization.