

Cited as "1 ERA Para. 70,551"

Transcontinental Gas Pipe Line Corporation; Algonquin Gas Transmission Company and Texas Eastern Transmission Corporation (ERA Docket No. 81-02-NG), October 7, 1982

Order Granting Interventions and Providing Opportunity for Comments and Requests for Further Procedures Concerning Recent Amendment to Application

I. Background

On December 16, 1980, Transcontinental Gas Pipe Line Corporation (Transco) and Algonquin Gas Transmission Company (Algonquin) filed a joint application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to section 3 of the Natural Gas Act, requesting authorization to import into the United States Canadian natural gas to be supplied by Pan-Alberta Gas Ltd. (Pan-Alberta). The ERA issued a notice of this application on January 12, 1981 (46 FR 5048, January 19, 1981). An additional notice published on January 29, 1981 (46 FR 9706) established February 18, 1981, as the final date for the filing of protests and petitions for intervention. Two petitioners, The Brooklyn Union Gas Company (Brooklyn Union) and the Public Service Commission of the State of New York (PSCNY), requested hearings on the application.

On October 28, 1981, an amended application was filed in this docket reflecting the addition of Texas Eastern Transmission Corporation (Texas Eastern) as a third joint applicant. The amended application also indicated that the date of first deliveries had been changed from November 1, 1983, to November 1, 1984. The ERA issued a notice of the amended application on December 7, 1981 (46 FR 61310, December 16, 1981), inviting by December 31, 1981, any new protests and petitions for intervention.

On December 24, 1981, the ERA sent to the three joint applicants a request for additional information (data request), and copies were served on all petitioners for intervention and on those who had filed notices of intervention. The applicants were asked to send by February 1, 1982, their response to the ERA and other parties that had filed to intervene, which they did.

In an effort to resolve certain basic questions concerning the point of importation, the ERA on May 5, 1982, sent the applicants a letter requesting clarification. The applicants responded in a June 7, 1982 letter to the ERA, confirming that their contracts with Pan-Alberta had been amended again and

that they intended to file a second amended application soon. This "Amendment to Joint Application" (Second Application Amendment) was submitted to the ERA on July 26, 1982, and reflected several changes in the proposed import project. One change was the abandonment of the import point initially proposed, Calais, Maine, in favor of a new import point near Niagara Falls, New York. To accomplish this change, the volumes the applicants propose to import would be transported by the proposed Trans-Niagara Pipeline.^{1/} An application to construct this pipeline currently is pending at the Federal Energy Regulatory Commission (FERC).^{2/} The Second Application Amendment also reflected a change by which the take-or-pay provisions in the applicant's respective gas sale contracts with Pan-Alberta were reduced from 85 percent to 75 percent of the maximum daily volumes, as calculated on an annual basis. In addition, the Second Application Amendment made other changes to the gas sale contracts ensuring Texas Eastern's continued participation in the project, modifying the applicant's makeup rights and the price to be paid for any deficiency volumes, and making certain other minor or conforming amendments.

II. Interventions, Motions for Hearing, Other Procedural Requests

A number of notices of and petitions for intervention were received in response to the ERA's notices of application and amended application. Several were filed late. The Appendix to this order lists the petitioners for intervention, as well as persons that submitted notice of intervention. There was no opposition to any of the petitions for intervention. Further, with regard to the late filings, no delay to the proceeding or prejudice to any party will result from our granting these unopposed petitions. Accordingly, the ERA has determined that good cause exists for accepting the several late filings, and this order grants all petitions for intervention.

Of the two requests for a hearing that were filed in this proceeding, only one is presently before us. On September 10, 1982, the PSCNY withdrew its request for a hearing, indicating that recent ERA actions had allayed its concerns about the handling of various pending applications to import Canadian gas. Brooklyn Union has requested either conditional authorization of this application or, alternatively, a formal hearing to address the subject of incremental pricing of this imported gas. The ERA has determined that Brooklyn Union's request is moot, since the natural gas covered in this application would be subject to incremental pricing pursuant to Title II of the Natural Gas Policy Act of 1978 (NGPA).^{3/} The automatic operation of the NGPA's incremental pricing provisions for this supply would achieve the policy objectives that underlie Brooklyn Union's concern that the cost of Canadian supplies be priced separately from Transco's general system supply. Accordingly, this order denies Brooklyn Union's requested relief.

The ERA also reviewed carefully a series of motions filed between November 12, 1981, and February 2, 1982, by the joint applicants and other parties interested in both this proceeding and another import proceeding, Boundary Gas, Inc., then pending before the ERA in Docket No. 81-04-NG.^{4/} In substance, these motions ask the ERA to expedite its review of this application so that decisions could be issued simultaneously in both dockets, or to convene comparative hearings.

With respect to the applicants' motions for expeditious consideration of their application, the ERA notes that the applicants have twice amended their application and that it has twice requested the applicants to submit additional information essential to our review. Thus, the ERA views its action in this proceeding as expeditious because the applicants have only recently perfected their application. Further, the ERA expects to issue a final decision in this proceeding well in advance of the projected initial delivery date of November 1, 1984.

The ERA also has considered the applicants' various requests for simultaneous decisions or comparative hearings of this application and that of Boundary Gas, Inc., in Docket No. 81-04-NG. For the reasons stated in DOE/ERA Opinion and Order No. 45 in the Boundary Gas, Inc. proceeding, the ERA has determined not to grant these requests.^{5/}

For these reasons, the ERA in this order denies all of the motions noted above.

III. Opportunity for Comment or Requests for Further Procedures

The ERA thinks that the record in this proceeding is adequate to enable us to reach a decision on the subject import application. All parties have been served with the ERA's data requests and the applicants' responses to them. However, the ERA would like to give the parties an opportunity to comment on the changes to the project resulting from the Second Application Amendment. Accordingly, we are providing that opportunity here. In addition, any party that believes this amendment necessitates further proceedings to enable the ERA to reach a decision may make appropriate requests for additional procedures. Any party asking for additional procedures should state fully the basis for its request, and in particular explain how its proposal would advance the ERA's consideration of this import application. Any comments or procedural requests in response to this order must be filed within thirty days of the date of this order. They should be filed with the Natural Gas Branch, Oil and Gas Imports Division, Economic Regulatory Administration, 12th and Pennsylvania Avenue, N.W., Room 6144, RG-631, Washington, D.C. 20461.

IV. Order

For the reasons set forth above, pursuant to section 3 of the Natural Gas Act, the ERA hereby orders that:

A. The petitions for leave to intervene, as set forth in the Appendix to this Opinion and Order, are hereby granted, subject to such rules of practice and procedure as may be in effect, provided that participation of intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions for leave to intervene and that the admission of such intervenors shall not be construed as recognition by the ERA that they might be aggrieved because of any order issued by the ERA in these proceedings.

B. All motions for hearings and other procedural relief are denied.

C. Parties may, within 30 days of the date of issuance of this order, submit additional comments or request additional procedures in this case concerning the "Amendment to Joint Application for Orders Authorizing the Importation of Natural Gas from Canada into the United States" filed on July 26, 1982, by Transcontinental Gas Pipe Line Corporation on behalf of itself, Algonquin Gas Transmission Company, and Texas Eastern Transmission Company.

Issued in Washington, D.C. on October 7, 1982.

--Footnotes--

1/ The ERA has been advised that the Trans-Niagara facilities are also contemplated for use in three other import projects. One of the projects has been conditionally authorized by the ERA and two are currently pending before it. See DOE/ERA Opinion and Order No. 46, issued September 16, 1982, in ERA Docket No. 81-30-NG, Transcontinental Gas Pipe Line Corporation (opinion unpublished as of this date); ERA Docket No. 81-29-NG, Transcontinental Gas Pipe Line Corporation; and ERA Docket No. 82-07-NG, Texas Eastern Transmission Corporation.

2/ FERC Docket Nos. CP 82-125-003 and 004.

3/ See, e.g., DOE/ERA Opinion and Order No. 29A, issued June 11, 1981, in ERA Docket Nos. 81-09-NG et al., Pacific Gas Transmission Co., et al. (1 ERA Para. 70531, Federal Energy Guidelines).

4/ On August 9, 1982, the ERA issued a decision in this docket, DOE/ERA

Opinion and Order No. 45, conditionally granting the application of Boundary Gas, Inc. to import Canadian gas (opinion unpublished as of this date).

5/ See DOE/ERA Opinion and Order No. 45, issued August 9, 1982, in ERA Docket No. 81-04-NG, Boundary Gas, Inc., mimeo at pp. 15-17 (opinion unpublished as of this date.).

[Note: The Appendix (Service List) is not reproduced.]