

Cited as "1 ERA Para. 70,565"

Tennessee Gas Pipeline Company (ERA Docket No. 82-18-NG), July 5, 1984.

Order Granting Interventions and Providing Opportunity for Comments and Requests for Further Procedures

I. Background

On November, 1982, Tennessee Gas Pipeline Company filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act, requesting interim authorization to import from Canada up to 84,000 Mcf per day of natural gas during the time that its related import application in ERA Docket No. 82-10-NG is pending decision by the ERA. The imported volumes are to be purchased from Canadian-Montana Pipe Line Company (Canadian-Montana) on an interruptible basis beginning as soon as regulatory approval is obtained.

On January 12, 1983, the ERA issued a notice of Tennessee's application, inviting protests or petitions to intervene, which were to be filed by February 17, 1983.¹

The ERA has received 14 timely petitions to intervene and one late petition from Brooklyn Union Gas Company (Brooklyn Union) which was filed on February 18, 1983. The Public Service Commission of West Virginia filed a timely notice of intervention. Appendix A lists those persons filing interventions. There was no opposition to any of the petitions for intervention. Further, with regard to Brooklyn Union's late filing, no delay to the proceeding or prejudice to any party will result from our granting this unopposed petition. Accordingly, the late filing is accepted, and this order grants intervention to all petitioners.

In its petition to intervene, the New England Fuel Institute (NEFI), an association of small and independent home heating oil distributors in New England, opposed Tennessee's application and requested a hearing. NEFI indicated that its member companies are in direct competition with various Tennessee customers. NEFI stated that it can demonstrate that Tennessee does not need the imported supplies and cannot market the gas without adversely affecting consumers of natural gas and competing fuels. NEFI also stated that authorization of the import will create surpluses which would decrease the incentive to produce domestic natural gas. Finally, NEFI noted in its petition that Tennessee was seeking authorization at the Federal Energy Regulatory Commission (FERC) to make off-system sales. NEFI alleges that if the import is

approved, Tennessee will supply a competitive fuel to an area served by NEFI's members during a period when gas is unmarketable. This may enable Tennessee to convert customers of NEFI's members from oil to gas, which NEFI believes is inconsistent with the public interest.

On February 15, 1984, the Secretary of Energy issued new policy guidelines for the importation of natural gas, along with revised delegation orders to the Administrator of the ERA.^{2/} The objective of the new policy is to establish gas trade on a competitive and market-responsive basis.

As a first step in implementing the new policy, the Administrator issued a procedural order on February 16, 1984, setting forth certain reporting and other requirements for all importers, including Tennessee.^{3/}

In accordance with that order, Tennessee supplemented its application in this docket on April 18, 1984. In its supplement, Tennessee stated that because its gas purchase agreement with Canadian-Montana requires modification to meet the policy guidelines, it will renegotiate the contract and either supplement or amend its application upon completion of these negotiations. Tennessee again pointed out that having the supply of gas available on a best efforts basis will provide flexibility to meet potentially heavy winter demand or emergency conditions which might impair its system operations. Because Tennessee believes the interim imports will provide a valuable interim service prior to initiation of long-term service, it requests that the import be authorized without awaiting contract renegotiations.

II. Opportunity for Comment or Request for Further Procedures

In light of the 18-month delay since Tennessee filed its application, the issuance of the new import policy, and Tennessee's supplement to its application filed on April 18, 1984, the parties to this proceeding are requested to review their position on Tennessee's application and to submit modifications, if any, to the ERA. The decision will be made on the basis of the information now in the record supplemented by comments filed in response to this order.

The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which imports will be determined to be in the public interest if the imported gas is competitive in the markets served.^{4/} Although Tennessee indicates that its import arrangement requires modification to meet the policy guidelines, we are influenced in our consideration of the application by the fact that the gas will be imported on a short-term, interruptible basis and Tennessee will incur

no take-or-pay or minimum bill obligations. We find this strongly persuasive on the questions of contract flexibility and market-responsiveness. Therefore, it is our intention to grant the interim authorization Tennessee has requested. Parties opposing this application should address in their comments the issue of competitiveness as set forth in the policy guidelines, recognizing that the proposed buyer-seller negotiated agreement is presumed to be competitive unless demonstrated otherwise.

If any party wants an additional procedure, even if a previous request was filed, the request for the particular procedure should be included in the comments filed in response to this order, together with a discussion of how the procedure will illuminate the issues and advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to the decision, and that a trial-type hearing is necessary for a full and true disclosure of the facts.

Order

For the reasons set forth above, it is ordered 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 as modified by their responses to Paragraph B of this Order, 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 this proceeding.

B. Any party to this proceeding may file written comments discussing the issues enumerated herein. Any issues not addressed in this Order which any party wishes to propose as relevant to this proceeding may be submitted and discussed in writing. All comments shall be filed and served no later than 4:30 p.m. e.d.t., August 6, 1984.

C. Any party wishing to respond to the comments submitted by August 6, 1984, should file and serve those responses no later than 4:30 p.m. e.d.t., August 21, 1984.

D. All written submissions shall be filed with the Economic Regulatory Administration, Natural Gas Division, Room GA-033, RG-43, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Issued in Washington, D.C., on July 5, 1984.

--Footnotes--

1/ 48 FR 2174, January 18, 1983.

2/ 49 FR 6684, February 22, 1984.

3/ 49 FR 6691, February 20, 1984.

4/ 49 FR 6684, February 22, 1984.

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82-18-NG

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