UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Rehearing

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

Yukon Pacific Corporation) Docket Nos. GP87-16-001 and 002

ORDER DENYING REHEARING

(Issued August 5, 1987)

On May 27, 1987 (39 FERC ¶ 61,216), the Commission issued a declaratory order defining the potential scope of its jurisdiction over Yukon Pacific's proposed Trans-Alaska Gas System (TAGS). On June 26, Foothills Pipe Line (Yukon) Ltd. and Alaskan Northwest Natural Gas Transportation Co. (the interveners) filed requests for rehearing. We will deny the requests. They do not raise any new issues of fact, law or policy that were not previously considered. To the extent that the interveners misconstrue the scope of our May 27 order, we will clarify it.

Both Alaskan Northwest and Foothills urge us to vacate the May 27 order, arguing that it is arbitrary and capricious, is unsupported by substantial evidence, makes erroneous findings of fact, and fails to comply with the National Environmental Policy Act of 1969 (NEPA). They challenge, in particular, two alleged "findings" of fact:

1. The nature, the identity of the owner and operator, and the legal status, of the gas conditioning plant (if any) that TAGS will use on the North Slope.

2. Whether the construction of TAGS would have an economic impact on gas ratepayers in the U.S.

The interveners contend that the May 27 order made incorrect "findings" on these points, that such "findings" are not supported by record "evidence", and that the conclusions on jurisdiction must be vacated because they are based on these alleged "findings".

All of these arguments are premature and unripe. The May 27 order did not make any findings of fact, on these or any other subjects. Indeed, the order specifically recognized that Yukon Pacific is in the process of developing its project, and is not yet in a position to conclusively state in detail the precise nature and scope of its project. To assist Yukon Pacific in that development process, the order outlined the potential parameters of the Commission's jurisdiction, based on the tentative facts set forth by Yukon Pacific in its petition, and based on other stated factual predicates. The order explicitly stated that, if these factual assumptions change, the preliminary jurisdictional determinations based on them will necessarily have to be reconsidered.

The May 27 order did not grant any authority to Yukon Pacific, nor did Yukon Pacific seek any. If and when Yukon Pacific files an application for authority under section 3 of the Natural Gas Act to utilize a particular place of export, it will have the opportunity to describe its project in detail in its application, based on the development of its project at that time. Notice of the application would be published in the Federal Register, and Alaskan Northwest and Foothills would then have ample opportunity to challenge the facts in the application. If such pleadings give rise to disputed issues of fact material to determination of the Commission's jurisdiction (or material to determination of any other issue), the Commission would consider at the time what procedures would be appropriate to resolve such issues, and would resolve them accordingly. The May 27 order did not purport to resolve any of these potential fact issues (e.g., the potential existence and legal status of a gas conditioning plant on the North Slope), nor would any useful purpose be served by attempting to resolve them here and now absent an application for specific authority and at a time when Yukon Pacific itself acknowledges that it is still working out the details of these facts. Nor do preliminary determinations of jurisdiction based on factual predicates cause any harm to anyone; they are valid only to the extent that the factual predicates are valid, and the interveners challenge only the predicates, not the conclusions that follow from those predicates if the predicates turn out to be accurate.

The interveners challenge in particular the alleged "finding" (May 27 order, mimeo at 17) that "[i]n the instance of any export of gas, unlike an import, there are no economic consequences to U.S. ratepayers." Based on this sentence, by itself, the interveners argue that the export of North Slope gas could have an economic consequence by reducing the total supply of gas available for consumption in the U.S., thereby potentially increasing the price of gas as plotted on demand/supply curves. That sentence, however, must be read in conjunction with the

APR-16-2012 16:58 From: To:9190727205 P.12/13

sentence immediately following it in that paragraph: "The cost of the project, and the risks inherent in it, will be borne (in whatever fashion) by the project sponsors, its lenders and investors, and its foreign purchasers of gas."

When gas pipeline facilities are constructed to be used to import gas for consumption in the U.S. (or, for that matter, to transport gas from one part of the U.S., such as the North Slope of Alaska, to another part of the U.S.) the costs of those facilities will be amortized in the rates paid for the gas to be imported (or transported). Absent section 7 jurisdiction, a regulatory gap might occur if no governmental agency has or asserts jurisdiction to evaluate those costs, and the propriety of the construction that gives rise to them. By contrast, if the gas is exported, those construction costs are paid by someone other than U.S. ratepayers. The interveners do not challenge that conclusion and the paragraph does not go beyond that conclusion.

The May 27 order made no determination as to whether the export of the gas itself (as opposed to the construction of facilities for that purpose) would or would not have an economic consequence on U.S. ratepayers. Furthermore, that issue (if it is an issue) would not give rise to a regulatory gap. It would be subsumed in the determinations of the President and the Administrator of the Economic Regulatory Administration in considering Yukon Pacific's applications (if it files such applications in the future) for authorization to export the gas. The May 27 order expressed no opinion whatsoever as to how such an issue might be addressed (if, in fact, it ever becomes an issue), and we express no such opinion here.

Finally, the interveners' NEPA arguments are equally premature. The May 27 order was a preliminary determination of jurisdiction; it did not authorize any construction or transaction, and by itself had no impact whatsoever on the environment. Hence, no environmental impact statement (EIS) was required to be prepared prior to the issuance of that order. The May 27 order recognized that issuance of a substantive order in the future would require access to an appropriate EIS, and noted that preparation of an EIS is currently under way in conjunction with Yukon Pacific's application to the Department of the Interior for right-of-way authority.

The interveners allege that the first draft of Interior's EIS does not adequately address the potential environmental impact of the North Slope gas conditioning facilities, and therefore that Commission approval of a place of export of Yukon Pacific's gas based on the draft would be violative of NEPA.

These allegations are not ripe for consideration. We do not have pending before us any application by Yukon Pacific for substantive authority. If and when Yukon Pacific files such an application with us, there will be ample opportunity for the Commission and interested parties to such a proceeding to consider the scope of whatever EIS may be required by whatever determinations the applicants request the Commission to make. The EIS of which the interveners complain is still in its draft stages, and is being prepared in conjunction with an application pending before the Department of the Interior, not the Commission. If the interveners here perceive shortcomings in that EIS process, their views would be more appropriately addressed to the lead agencies who are directing the preparation of that EIS.

For the above discussed reasons, the requests for rehearing are denied.

By the Commission.

(S E A L)

Kenneth F. Plumb

Kenneth F. Plumb,
Secretary.

APR-16-2012 16:59 From: To:919072715205 P.13/13