

104 FERC ¶ 61,143
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Maritimes & Northeast Pipeline, L.L.C.

Docket No. CP02-78-002

ORDER GRANTING ALTERNATIVE REQUEST FOR RELIEF

(Issued July 28, 2003)

1. On January 31, 2002, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) filed an application pursuant to Section 7(c) of the Natural Gas Act (NGA), for a certificate of public convenience and necessity to construct and operate certain pipeline and compression facilities (the Phase IV Project) in Maine and Massachusetts that would add approximately 385,000 Dth per day of capacity to its system. In a data request issued March 7, 2003, Commission staff asked Maritimes to clarify the status of the Phase IV Project in light of published reports that EnCana Energy Services, Inc., the producer of the gas intended for the project, had requested a delay of at least one year in the Canadian regulatory review process.
2. On June 19, 2003, Commission staff held a technical conference to address the status of the project. At the technical conference, Maritimes requested that the Commission hold the proceeding in abeyance until December 10, 2003, at which time it would submit a report to the Commission regarding the status of the project. Parties were given until June 30, 2003, to file written comments. Seven parties filed comments.
3. For the reasons set forth below, we will continue to process Maritimes' application, and direct Maritimes to respond to outstanding data requests from Commission staff.

Background

4. Maritimes transports gas from the United States-Canada border near Goldsboro, Nova Scotia, through Maine, New Hampshire, and Massachusetts to a terminus near Dracut, Massachusetts. Approximately 101 miles of Maritimes' mainline facilities, from Westbrook, Maine, to Dracut (the Joint Facilities), are jointly owned with Portland

Natural Gas Transportation System (PNGTS).¹ At Dracut, the joint facilities interconnect with facilities of Tennessee Gas Pipeline Company (Tennessee).

5. Maritimes has executed a long-term precedent agreement for up to 400,000 Dth per day of firm transportation capacity with EnCana (formerly PanCanadian Energy Services, Inc.), an exploration and production company, to transport natural gas from EnCana's Deep Panuke Offshore Gas Development Project located offshore Nova Scotia, Canada to markets in New England and other northeastern states. At the time this application was filed on January 31, 2002, the Panuke Project was scheduled to begin production in commercial quantities as early as July 2004.

6. To provide the new service to EnCana, Maritimes has proposed what it calls its Phase IV Project to nearly double its existing system capacity from 415,480 Dth per day to approximately 800,000 Dth a day by constructing approximately 31.3 miles of 36-inch diameter pipeline loop in Washington County, Maine, and by adding compression. The Phase IV Project includes two compressor stations to be located on the Joint Facilities. PNGTS protested the application, but subsequently withdrew its protest after the Commission accepted an uncontested settlement agreement between the parties resolving a number of contract issues relating to the Joint Facilities.²

Post Technical Conference Comments

Maritimes and EnCana

7. Maritimes and EnCana request that in light of their investment in the Phase IV Project, in terms of capital invested and in the filing of applications with other regulatory agencies, the Commission hold the proceeding in abeyance until December 10, 2003, at which time Maritimes it will submit a report to the Commission on the status of the project. This date coincides with the date on which it will provide a similar report to the Canadian National Energy Board (NEB) and the Canada-Nova Scotia Offshore Petroleum Board, which have jointly granted a regulatory adjournment regarding EnCana's Deep

¹The ownership, construction, and operation of the Joint Facilities are governed by three agreements, the Ownership Agreement, the Engineering and Construction Management Agreement, and the Operating Agreement. Collectively, these agreements are known as the Definitive Agreements.

²See 101 FERC ¶ 61,348 (2002).

Panuke offshore development proposal.³ Holding the proceeding in abeyance, they say, would be appropriate because the overall Phase IV/Deep Panuke projects are very far advanced. EnCana's drilling has already identified substantial reserves, Maritimes and its Canadian pipeline affiliate have designed pipeline infrastructure facilities to accommodate Deep Panuke production, and markets are in place to receive the gas.

8. Maritimes and its Canadian pipeline affiliate aver they have spent approximately \$15 million (U.S.) on the project. EnCana has already drilled four wells at a cost of \$250 million (Canadian), and will complete one or possibly two additional wells by December, at a cost of approximately \$50 million (Canadian) each. EnCana explains that the center of the Deep Panuke field is located in the ocean approximately 150 miles southeast of Halifax, Nova Scotia, and it states that significant capital and time are involved in developing a production project in what it calls a "frontier basin" like the Scotian Shelf. EnCana affirms that it remains strongly committed to the development of the Deep Panuke Project, and is continuing to invest significant amounts of capital in the project and working to develop the optimal development plan.

9. EnCana states that dismissal of the Phase IV application would create substantial uncertainty that the pipeline infrastructure necessary to deliver Deep Panuke production to market will be available at the time its project is ready for commercial production. EnCana urges that the economic risks and technical challenges associated with developing new fields in the offshore Nova Scotia region make it critical that government agencies coordinate and remain flexible in their review of new production and pipeline projects tied to the region. More established producing regions, it says, do not present the same level of concern for producers that pipeline capacity may not be available to transport new production to market.

10. EnCana contends that dismissal of this application now could substantially delay development of an important supply source, perhaps permanently. EnCana urges the Commission to remain flexible to maintain the momentum of this complex project. Maritimes states that the regulatory oversight of two nations, two Canadian provinces, and three states is complex, and that Maritimes has already received approval from the NEB for the onshore pipeline in Canada. Maritimes has likewise filed all its permits with the states, and has received air quality approval from the state of Maine. Withdrawal or dismissal of its Phase IV Project application could affect those applications should it have

³Maritimes says that the NEB has already approved Maritimes-Canada's Phase IV onshore facilities.

to restart the regulatory process and ultimately delay the delivery of needed gas volumes from a significant supply source to the United States.

11. Maritimes states, however, that if its proposal to hold the proceeding in abeyance is not acceptable to the Commission, Maritimes would be prepared to go forward with processing the application rather than have it dismissed. Maritimes says it would respond to outstanding Staff data requests within 30 days after being directed to do so.

PNGTS

12. PNGTS opposes Maritimes' request to hold the proceeding in abeyance. PNGTS argues that Maritimes' proposed delay would hinder the development of competitive projects to bring needed gas supplies to the Northeast United States. PNGTS avers that substantial delay and uncertainty surrounding the Phase IV Project is hampering the ability of market participants to design, price, evaluate, and commit to competitive projects using the Joint Facilities. PNGTS states that it has had a number of discussions with market participants interested in moving gas from the Dawn, Ontario supply hub to PNGTS' system, but argues that those potential projects cannot be fully evaluated or developed given the uncertainty surrounding the status of the Phase IV expansion.⁴

13. PNGTS notes that the December 10, 2003 date involves only the filing of a status report on the project. PNGTS states that an EnCana news release states that Deep Panuke volumes are not in its plans until sometime after 2006, and that a study by the NEB projects 2007 or 2008 as the earliest dates for Deep Panuke production, if EnCana is successful in developing additional reserves. PNGTS argues that the delay requested by Maritimes conflicts with the Commission's policy of expediting the certificate process.

TransCanada Pipelines, Limited

14. TransCanada, which describes itself as the largest operator of gas transmission facilities in Canada, owns facilities that connect with U.S. facilities to transport gas from Canada to the United States. It also opposes Maritimes' proposal to hold the proceeding in abeyance. TransCanada, referring to information obtained from various public media, suggests that the Maritimes project may never be built. It cites reports that EnCana has not yet found sufficient gas reserves to justify long term commitment to the Phase IV Project. TransCanada also suggests, based on published reports, that EnCana is actively

⁴PNGTS transports natural gas from the New Hampshire-Canada border to eastern Massachusetts.

investigating the use of existing, depreciated pipeline capacity rather than the proposed new and more expensive Phase IV capacity. Moreover, it says, arguments that dismissal of this application would delay delivery of gas needed in the United States are inconsistent with the fact that commercial production of the Deep Panuke field would probably not occur until 2007. It suggests that other projects using the Joint Facilities may ultimately be able to serve growing demand in the Northeast on a more timely basis than the Phase IV facilities.

The Province of Nova Scotia

15. Nova Scotia states that there would seem to be little disadvantage to allowing the application to remain on file with the Commission for the next several months as EnCana proceeds with its developmental work. Dismissal of the application, it says, could retard the overall regulatory process and send the wrong signals to gas marketers and producers. The fact that there are uncertainties involved respecting the development of the Scotian Shelf should not be surprising as this is a frontier exploration area. The Province states that PNGTS has not offered any proposal despite suggestions that it studying some possible expansion alternatives that could involve the Joint Facilities.

KeySpan Delivery Companies

16. KeySpan supports Maritimes' request. The Deep Panuke project and the Phase IV expansion represent an important potential future source of supply for the New England market, it says, and a minor delay in the regulatory approval process would not be significant. KeySpan confirms PNGTS' statement that gas suppliers are actively seeking access to the New England area, especially Boston, but KeySpan does not believe that allowing Phase IV to remain pending creates an undue amount of uncertainty in the marketplace. A temporary delay, in fact, makes sense as it would bring the Commission's regulatory process in-step with Canada's.

Corridor Resources, Inc.

17. Corridor, a producer in Eastern Canada, also supports Maritimes' proposal. Corridor states that it understands the risks involved in developing reserves in this area and the complexity of the regulatory approval process, both for a producer's development plan and for the pipeline infrastructure necessary to bring production to market. In light of the unique risks involved with developing reserves in this region, Corridor states, it is critical that all regulatory agencies remain flexible in their procedures in evaluating in assessing proposed projects. Corridor avers that allowing the Phase IV Project to remain pending would send the correct signal to North American gas producers, markets, and all

stakeholders in the United States and Canada, and indicate that the Commission is committed to working with producers and pipelines to encourage development of pipeline infrastructure.

Discussion

18. The Commission understands the uncertainties, risks, and other difficulties associated with developing natural gas projects in the ocean offshore Canada. We also appreciate the large investments that have already been made in the project both by Maritimes and EnCana and are reluctant to take any action that could retard that development or delay bringing new gas supplies to the U.S. market. The Maritimes/EnCana precedent agreement is still intact, and we are convinced that Maritimes and EnCana are still committed to the project despite delays in Deep Panuke production. Accordingly, we will not dismiss Maritimes' Phase IV application at this time.

19. On the other hand, we believe that the application process should go forward and not be delayed as Maritimes and EnCana suggest. In arguing for a delay in the processing of the Phase IV application, Maritimes and EnCana both stress the need for pipeline facilities to be in place to handle EnCana's gas from the Deep Panuke field when commercial production is eventually ready to begin. Pointing to the complexity of the regulatory approval process involved in this international undertaking and the fact that Maritimes has already received approval from the NEB for its proposed pipeline in Canada and has filed applications for all needed state permits in the United States, they urge that the Commission remain flexible in its approach to this project to avoid further delay and duplication of efforts. We agree. However, we find that this can best be accomplished by continuing the application process before this Commission.

20. By moving the application process along, the Commission can determine whether the proposed project is in the public convenience and necessity, and if it finds that it is, completing the certification process will assure that construction of the pipeline can begin as soon as gas supply becomes available. This approach parallels and meshes well with the NEB's already existing approval of Maritimes' connecting onshore pipeline project in Canada. This will likewise allow the regulatory process to continue before the various states involved. Another important consideration is administrative efficiency. Completing staff work on this project will free up Commission resources for other current and future projects.

21. We are adopting Maritimes' alternative proposal and will continue to process the Phase IV application. Maritimes must respond to all outstanding staff data requests

within 30 days of this order. For informational purposes, Maritimes should also report to the Commission on or before December 10, 2003, regarding the results of EnCana's drilling tests, the status of the Deep Panuke production project, and the estimated date on which EnCana's project will be ready for commercial production.

The Commission orders:

(A) Maritimes' request to hold the Phase IV application proceeding in abeyance until December 10, 2003 is denied, and its alternative request to continue processing the application is granted.

(B) Maritimes must respond to outstanding staff data requests within 30 days from issuance of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.