

Cited as "1 ERA Para. 70,778"

Ocean State Power (ERA Docket No. 86-62-NG), June 13, 1988.

### DOE/ERA Opinion and Order NO. 243

Order Granting Conditional Authorization to Import Natural Gas From  
Canada and Granting Interventions

#### I. Background

On November 19, 1986, Ocean State Power (Ocean State) 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 authorization to import up to 100,000 Mcf per day of Canadian natural gas over a 20-year term beginning on the date of the first delivery. Ocean State is a Massachusetts partnership currently consisting of two Delaware corporations, Ocean State Power Company and JMAI Power Corporation. Ocean State anticipates that additional partners would include affiliates of TransCanada PipeLines Limited (TransCanada), Eastern Utilities Associates, New England Electric System, and Newport Electric Corporation. The imported gas would fuel Ocean State's new power plant which it plans to build in Burrillville, Rhode Island. The plant will be comprised of two 250 megawatt combined cycle electrical generating units to be constructed sequentially.<sup>1/</sup>

Ocean State entered into a precedent agreement with ProGas Limited (ProGas) on April 17, 1986, which was amended March 3, 1988, to purchase up to 50,000 Mcf of gas per day during periods when only one of the combined cycle units is operational and up to 100,000 Mcf per day during periods when both units are operational. The gas purchase contract will be executed after receipt and acceptance of all government authorizations. If Ocean State has not commenced construction of its initial combined cycle unit by September 30, 1988, the contract may be cancelled by either party.

The gas would be imported into the U.S. at the existing pipeline interconnection between ProGas' Canadian transporter, TransCanada, and Tennessee Gas Transmission Company (Tennessee) on the Canadian border near Niagara Falls, Ontario. Tennessee would transport the gas from Niagara Falls to Rhode Island. Tennessee has applied to the Federal Energy Regulatory Commission (FERC) for authority to transport a maximum quantity of 50,000 Mcf per day of gas to supply the first phase of the Ocean State project and construct additional facilities needed to transport and deliver this quantity.<sup>2/</sup> Ocean State did not indicate whether Tennessee would be involved

in transporting gas for the second combined cycle unit or what additional pipeline facilities, if any, would be needed to supply the second unit.<sup>3/</sup>

The price of the imported gas under the proposed contract would be indexed in accordance with the New England Power Pool 4/ (NEPOOL) Fossil Fuel Index to ensure that the price remains competitive over the life of the contract. The initial base price at the international border shown in Ocean State's application would be \$3.35 (U.S.) per Mcf based on the NEPOOL Fossil Fuel Index for calendar year 1985. The price will be adjusted based on changes in the index. Ocean State would pay a two-part demand/commodity rate. The demand charge would include the monthly demand tolls for firm transportation in Canada by TransCanada and Nova Corporation of Alberta and the monthly demand toll billed by ProGas for its monthly services. The commodity charge would be determined by subtracting the demand charge from the base price established by the contract. Because the border price is set in the contract, the commodity charge per unit of gas delivered would be determined by subtracting the corresponding demand charge (computed from the monthly demand charge) from that border price.

The purchase contract does not impose a tax-or-pay obligation on Ocean State; thus, Ocean State will not be required to pay commodity charges for gas not taken. The contract provides that if minimum volumes are not taken, ProGas may seek a reduction in the daily contract quantity. After the tenth contract year, Ocean State or ProGas may request renegotiation of all of the pricing terms of the contract, including both the demand and commodity charge. If either Ocean State or ProGas is unable to agree upon such pricing terms, either party has the right to refer the matter to arbitration.

In support of its application, Ocean State asserts that the requested authority is not inconsistent with the public interest because the provisions of the gas purchase contract ensure that the import will be competitive. In addition, Ocean State asserts that ProGas has demonstrated itself to be a reliable supplier of natural gas.

## II. Interventions and Comments

The ERA issued a notice of this application on February 9, 1987, with protests, motions to intervene, or comments to be filed by March 20, 1987.<sup>5/</sup> A motion to intervene, without comment or request for additional procedures, was filed by Texas Eastern Transmission Corporation. Motions to intervene in support of Ocean State's application were filed by Tennessee Gas Pipeline Company and TransCanada Pipelines Limited. Foothills Pipe Lines (Yukon) Ltd. filed a motion to intervene which requested that any ERA import authorization

not approve any specific delivery point for the gas to enter the U.S. to ensure that there is no prejudice to the outcome of the pending proceedings before the FERC relating to transportation of Canadian gas to northeast markets.<sup>6/</sup> This conditional order does not authorize a specific entry point because the Secretary of Energy has delegated the authority to approve the place of entry for imports involving the construction of new domestic facilities to the FERC (DOE Delegation Order No. 0104-112).<sup>7/</sup> A late motion to intervene in support of Ocean State's application was filed by ProGas. There is no opposition to any motion. Although ProGas filed late, it did not delay the proceeding or prejudice any party. Accordingly, the ERA will accept ProGas' filing and this order grants intervention to all movants.

An organization identified as Concerned Citizens of Burrillville, Rhode Island and Uxbridge, Massachusetts (Concerned Citizens) filed late comments which protested the application, but did not seek to intervene. Concerned Citizens comprises about 50 families living near the proposed site for Ocean State's power plant. Concerned Citizens' comments focused on their concerns about the site for the proposed power plant. They requested that the ERA evaluate the environmental effects resulting from construction and operation of the plant and prepare an Environmental Impact Statement (EIS) in compliance with the National Environmental Policy Act of 1969 (NEPA).<sup>8/</sup>

### III. Decision

The application filed by Ocean State has been evaluated to determine if the proposed import arrangement meets the public interest requirements of Section 3 of the NGA. Under Section 3, an import must be authorized unless there is a finding that it "will not be consistent with the public interest."<sup>9/</sup> The Administrator is guided by the DOE's natural gas import policy guidelines.<sup>10/</sup> Under this policy, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test. In the case of long-term arrangements such as this, need for the gas supply and security of supply are also important considerations.

#### A. Competitiveness of the Import

The DOE guidelines state that the competitiveness of an import arrangement will be assessed by a consideration of the whole fabric of the arrangement. They contemplate that the contract arrangements should be sufficiently flexible to permit pricing and volume adjustments as required by market conditions and availability of competing fuels, including domestic natural gas. Ocean State's import proposal, as set forth in the application, is consistent with the DOE policy guidelines.

Ocean State has freely negotiated a gas purchase agreement with terms that provide flexibility to the import arrangement and help ensure that it will be market responsive. Specifically, the contract contains no take-or-pay requirements, but does include a two-part demand/commodity pricing structure and an automatic price adjustment mechanism tied to the price of competing fossil fuels purchased by other electric generating utilities in New England. It also contains price renegotiation provisions and an arbitration clause that are designed to ensure that the imported gas will be competitive in Ocean State's market throughout the 20-year term of the import proposal. Thus, ERA finds the arrangement to be competitive.

#### B. Need

Under the policy guidelines, need is presumed to be a function of competitiveness. It is for Ocean State, the user of this gas, to decide for itself what source offers the best economic choice, given the available options. The fact that Ocean State would incur no take-or-pay or minimum bill obligation in connection with this import ensures that Ocean State does not have to take gas from ProGas if it is not the most competitively priced supply available. Thus, the ERA finds that there is need for the proposed import.

#### C. Security of Supply

ProGas has historically been reliable as a supplier of Canadian gas to the U.S. for many years. Further, no party has argued that ProGas' reserves are not secure. Therefore, the ERA finds that security of supply has been established and that the import will not lead to any undue dependence on an unreliable source of supply nor otherwise compromise the energy security of the nation over the contract period.

#### D. Environmental Determination

The National Environmental Policy Act of 1969 (NEPA) 11/ requires federal agencies to give appropriate consideration to the environmental effect of their proposed actions. For Ocean State's proposed project, the issuance of several major permits and authorizations are required before the project can proceed, including the ERA's authorization under Section 3 of the NGA to import gas from Canada to be used at the power plant; DOE's exemption from the requirements of the Powerplant and Industrial Fuel Use Act 12/ to construct and operate the power plant; and FERC's authorization under Section 7 of the NGA for Tennessee to upgrade and extend its existing pipeline facilities to transport the power plant's fuel requirement. The FERC has the lead in preparing an Environmental Impact Statement (EIS) assessing the impacts of

constructing both the powerplant and Tennessee's additional transmission facilities.<sup>13/</sup> The DOE is a cooperating agency<sup>14/</sup> and assisted in the review of the draft EIS. We note that the FERC had the benefit of the views of Concerned Citizens on the siting of the proposed power plant in preparing that draft EIS.

The approval of this import of natural gas is therefore being conditioned on completion of the environmental review of the new facilities. When the EIS is completed by the FERC, the DOE will issue a Record of Decision.<sup>15/</sup> The ERA will then reconsider this conditional order and issue a final opinion and order. This conditional order indicates to the parties the ERA's determination at this time on all but the environmental issue in this proceeding. All parties are advised that the issues addressed herein regarding the import of natural gas will be reexamined at the time of the DOE's review of the FERC NEPA analysis. The results of that reexamination will be reflected in the final opinion and order.

#### F. Conclusion

After taking into consideration all the information in the record of this proceeding, I find that granting Ocean State authority to import up to 100,000 Mcf of Canadian natural gas per day over a 20-year period beginning on the date of first delivery, is not inconsistent with the public interest.

### ORDER

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

A. Ocean State Power (Ocean State) is authorized to import up to 100,000 Mcf per day of Canadian natural gas from ProGas Limited over a 20-year period beginning on the date of first delivery in accordance with the pricing and other provisions established in the proposed Gas Purchase Contract submitted as part of its application.

B. The authorization in Ordering Paragraph A is conditioned upon entry of a final opinion and order by the Economic Regulatory Administration (ERA) after review by the Department of Energy (DOE) of the final Environmental Impact Statement on Ocean State's power plant construction and Tennessee Gas Pipeline Company's related natural gas pipeline facilities currently being prepared by the Federal Energy Regulatory Commission, and the completion by the DOE of its responsibilities under the National Environmental Policy Act.

C. Ocean State shall notify the ERA in writing of the date of first delivery of natural gas imported under Ordering Paragraph A above within two weeks after deliveries begin.

D. With respect to the imports authorized by this Order, Ocean State shall file with the ERA within 30 days following each calendar quarter, quarterly reports showing by month, the quantities of natural gas in MMcf imported under this authorization, and the average price per MMBtu paid for those volumes at the international border. The price information shall include a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis.

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

F. The authorization granted in Ordering Paragraph A is subject to the condition stated in Ordering Paragraph B, the resolution of which may result in further conditions imposed in subsequent proceedings in this case. Ocean State and intervenors in this proceeding shall be bound by any opinion and order issued in such subsequent proceedings.

Issued in Washington, D.C., on June 13, 1988.

--Footnotes--

1/ On December 31, 1986, Ocean State also filed an exemption petition with the ERA's Office of Fuels Programs pursuant to the Powerplant and Industrial Fuel Use Act of 1978 (P.L. 95-620) to exempt the powerplant from the statutory requirement that it be capable of using coal or another alternate fuel as a primary energy source instead of natural gas or oil. (Docket No. ERA-C&E-87-22).

2/ The FERC is considering Tennessee's applications filed in FERC Docket Nos. CP87-75-000, CP87-131-000, CP87-131-001, CP87-132-000, and CP87-132-001 for permission to construct 36 miles of pipeline looping and associated facilities in New York and Massachusetts to transport the imported gas for Ocean State from Niagara Falls to Burrillville.

3/ The possibility that Ocean State may at some future time utilize another pipeline carrier in the United States for some or all of the imported

gas does not affect the decision in this docket or whether to authorize this import. If Ocean State decides to use another transporter, Ocean State is obligated at that time to file a report of contract amendments pursuant to Sec. 590.407 of the ERA's rules. If the border entry point is altered or should additional domestic construction be required to deliver any of the gas, Ocean State is obligated to file an application to amend its authorization.

4/ NEPOOL is a group of 53 electric generating utilities serving the states of Connecticut, Maine, Massachusetts, Vermont, New Hampshire, and Rhode Island and the provinces of Ontario and Quebec.

5/ 52 FR 4933, February 18, 1987.

6/ Northeast U.S. Pipeline Projects, Docket No. CP87-451-004, et al.

7/ 49 FR 6684, February 22, 1984.

8/ Concerned Citizens also filed comments in the exemption proceeding before the ERA's Office of Fuels Programs (Docket No. ERA-C&E-87-22), and intervened in Tennessee's proceeding in FERC Docket No. CP87-132-000 (see supra notes 1-2).

9/ 15 U.S.C. Sec. 717b.

10/ See supra note 7.

11/ 42 U.S.C. 4321, et seq.

12/ Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620 (November 9, 1978), as amended by Pub. L. 97-35 (August 13, 1981), as amended by Pub. L. 100-42 (May 22, 1987).

13/ Ocean State Power Project Draft Environmental Impact Statement (FERC/EIS-00500 D, March, 1988).

14/ 40 CFR Sec. 1501.6.

15/ 40 CFR Sec. 1505.2.