

Cited as "1 ERA Para. 70,810"

Ocean State Power (ERA Docket No. 86-62-NG), September 14, 1988.

## DOE/ERA Opinion and Order No. 243-A

Final Order Granting Authorization to Import Natural Gas from Canada

### I. Background

On June 13, 1988, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued DOE/ERA Opinion and Order No. 243 (Order 243) conditionally authorizing Ocean State Power (Ocean State) to import up to 100,000 Mcf per day of Canadian natural gas over a 20-year period, beginning on the date of first delivery, to fuel a new power plant it plans to build in Burrillville, Rhode Island.<sup>1/</sup> The plan will be comprised of two 250-megawatt combined-cycle electrical generating units to be constructed sequentially. Order 243 was conditioned on the issuance of a final opinion and order by the ERA after review by the DOE of the Final Environmental Impact Statement (FEIS) being prepared for the Ocean State project by the Federal Energy Regulatory Commission (FERC).

The natural gas would be purchased from ProGas Limited (ProGas) and enter the U.S. at a point near Niagara Falls, New York, through pipeline facilities owned and operated by Tennessee Gas Pipeline Company (Tennessee), which would then deliver the gas to the power plant. Tennessee has filed a related application that is currently pending before the FERC requesting authority to construct and operate additional facilities needed to transport the gas.<sup>2/</sup> The new facilities required by Tennessee include pipeline looping adjacent to its existing gas transmission pipeline in New York and Massachusetts, and a new pipeline in Massachusetts and Rhode Island (the Rhode Island Extension).

### II. Basis For Decision

Under Section 3 of the Natural Gas Act (NGA) an application to import natural gas must be approved unless, after opportunity for hearing, it is found that the import "will not be consistent with the public interest." <sup>3/</sup> The ERA is guided in making its determination by the DOE's natural gas import policy guidelines.<sup>4/</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. In

addition, the National Environmental Policy Act of 1969 (NEPA) <sup>5/</sup> requires the ERA to consider the environmental effects of natural gas import authorizations.

### III. Decision

#### A. Order 243

In Order 243, the ERA found that the import arrangement conforms to the DOE policy guidelines. The import arrangement will be competitive because the purchase contract contains an automatic price adjustment mechanism, price renegotiation provisions, and no take-or-pay requirements. Since Ocean State would incur no take-or-pay or minimum bill obligation in connection with this import, it is reasonable to assume that Ocean State will not take gas if it is not the most competitively priced supply available. Under the policy guidelines, need is presumed to be a function of competitiveness. Based on the marketability of gas under this arrangement, the ERA therefore determined that there is a need for the proposed import. With respect to security of supply, the ERA found 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 20-year term of the import proposal. Therefore, the ERA found that the proposed import would be consistent with the public interest.

The ERA has reviewed the entire record of this proceeding and has concluded that there is no information that would provide a basis for us to alter our position that the proposed import meets the public interest requirements of Section 3 of the NGA.

#### B. Environmental Determination

The FERC was the lead Federal agency in conducting an examination of the environmental effects of constructing both the power plant and Tennessee's additional transmission facilities and preparing the Ocean State FEIS for the project. The FERC has the responsibility under the NGA to approve the place of entry for imports whenever the import involves the construction of new domestic facilities and to certificate the pipeline facilities supplying the gas. Also, a license is necessary from the Rhode Island Energy Facilities Siting Board (EFSB), a state agency, to construct the power plant.<sup>6/</sup> Both agencies must still make final decisions on their authorizations. The DOE participated as a cooperating agency during the preparation of the FEIS. The FEIS was issued by the FERC on July 11, 1988,<sup>7/</sup> and was subsequently adopted by the DOE. The ERA relied on the FEIS in assessing the environmental effects of granting the import.

If the ERA denied the application and thereby prevented delivery of Canadian gas to the Ocean State power plant, Ocean State would be required to secure alternative sources of fuel or to abandon the project, in which case other generating facilities would have to be built to meet the expected future increases in electricity consumption in New England. The FEIS concluded that the environmental impacts of providing power to meet electrical demand by means of alternative fuels to natural gas and alternative types of generation other than the combined-cycle technology chosen by Ocean State, would cause impacts greater than, or comparable to, the Ocean State project. Therefore, the ERA has determined that granting the import authorization is environmentally preferable to denying the authorization.

The FEIS assessed a number of power plant site alternatives and pipeline route alternatives to replace portions of the proposed alignment to Tennessee's pipeline looping and Rhode Island Extension. Decisions concerning these alternatives will be made as part of the FERC and EFSB approval process. The FEIS concluded that the overall differences between Ocean State's proposed site and the two primary alternative sites evaluated in the FEIS was not significant and, with certain mitigating measures, construction and operation of the power plant at the proposed site would have a limited adverse environmental impact and would be environmentally acceptable. The FEIS also concluded that the proposed additions and upgrades to Tennessee's existing gas pipeline facilities, with certain mitigating measures, would have a limited adverse environmental impact and would be environmentally acceptable.

The FERC and the EFSB have the principal authority and direct responsibility to impose and monitor any mitigation conditions through their authorizations. In the FEIS, the FERC staff specified mitigation measures which it considers appropriate and reasonable for the construction and operation of the power plant and natural gas pipeline facilities. These additional mitigation measures would further reduce the anticipated environmental impacts. With respect to the measures for the natural gas pipeline, the FERC staff recommended that those measures be attached to any certificate issued by the FERC. With respect to the measures for the power plant, the FERC staff recommended that the FERC, through its authorization of the Tennessee pipeline facilities, require Ocean State to implement those measures not imposed by the EFSB permits.

While it is uncertain which, if any, of the various recommendations/mitigation measures would be implemented or imposed as conditions to any authorizations the FERC and EFSB decide to issue, the ERA has determined that the impacts of constructing and operating both the power plant and the proposed Tennessee gas pipeline facilities would be

environmentally acceptable under any of the alternative configurations assessed in the FEIS.

### C. Other Matters

In a letter dated July 14, 1988, Ocean State notified the ERA of an inconsistency between the term of the authorization conditionally approved in Order 243 and the term of the proposed gas purchase contract with ProGas, on which the authorization was based. Ocean State requests that the ERA conform the final import authorization with the term of the gas purchase contract.

Order 243 conditionally authorized Ocean State to import the natural gas for 20 years beginning on the date of the first delivery. In contrast, the contract provides that ProGas would commence deliveries to Ocean State on the first day of the test phase of the initial generating unit and continue for 20 years after the "commercial date" of the second generating unit, or 20 years after the "commercial date" of the initial unit if Ocean State does not purchase gas for the second unit from ProGas. The "commercial date" is defined in the gas purchase contract as the first day of the first month following the date on which the unit produces a net output of 75 percent or more of its design net capability for a 24-hour period and Ocean State notifies ProGas in writing of that fact.

As a result of a number of possible circumstances, the effect of conforming the duration of the import authorization to the term of the gas purchase contract would be to permit Ocean State to import gas throughout the indefinite future. For example, the first unit could fall short of producing a net output of 75 percent of its design net capability and the second unit may not be built. As a matter of law and policy, the ERA does not believe the public interest is served by a grant of authority with an indefinite term and we therefore are denying Ocean State's request. However, we are modifying the authorization to extend the import term by 180 days to allow a reasonable period of time for testing the initial generating unit prior to full operation. Ocean State may apply for an extension of this import authorization at such later time as may be appropriate.

### IV. Conclusion

The authorization contained in Ordering Paragraph A of Order 243 was conditioned upon issuance of a further ERA order after review by DOE of the FEIS on the Ocean State project, and completion by DOE of its NEPA responsibilities. This environmental review process has been completed. I find that granting Ocean State authority to import up to 100,000 Mcf of Canadian

natural gas per day over a period of 20 years and 6 months, beginning on the date of the first delivery, is the environmentally preferred alternative to denying the authorization, and is not inconsistent with the public interest within the meaning of Section 3 of the NGA.<sup>8/</sup>

## 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 period of 20 years plus 180 days, beginning on the date of the first delivery, in accordance with the pricing and other provisions established in the proposed Gas Purchase Contract submitted as part of its application.

B. 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.

C. 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.

Issued in Washington, D.C., on September 14, 1988.

--Footnotes--

1/ Ocean State Power, 1 ERA Para. 70,778.

2/ See FERC Docket Nos. CP87-75-000, CP87-131-000, 87-131-001, CP87-132-000, and CP87-132-001.

3/ 15 U.S.C. Sec. 717b.

4/ 49 FR 6648, February 22, 1984.

5/ 42 U.S.C. 4321, et seq.

6/ Ocean State filed an exemption petition with the ERA on December 31,

1986, pursuant to the Powerplant and Industrial Fuel Use Act (FUA) of 1978 (Pub. L. 95-620) to exempt the power plant 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. On June 29, 1988, Ocean State submitted, pursuant to the FUA Amendments of 1987 (Pub. L. 100-42), a coal capability certification in place of the previously requested exemption. Consequently, the power plant is no longer within the ERA's jurisdiction under the FUA.

7/ Ocean State Power Project Final Environmental Impact Statement (FERC/EIS-0050, July, 1988).

8/ In conjunction with this order, the ERA is issuing a Record of Decision, pursuant to the Council on Environmental Quality Regulations (40 CFR Part 1505) implementing the procedural provisions of NEPA and the DOE's guidelines for compliance with NEPA (52 FR 47662, December 15, 1987).