

Cited as "1 ERA Para. 70,815"

G.A.S. Orange Development, Inc. (ERA Docket No. 88-01-NG), October 17, 1988.

DOE/ERA Opinion and Order No. 274

Conditional Order Granting a Long-Term Authorization to Import Natural Gas from Canada and Granting Intervention

I. Background

On January 5, 1988, G.A.S. Orange Development, Inc. (G.A.S. Orange), filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111, for authorization to import up to 120,000,000 MMBtu's of Canadian natural gas from Canadian Hunter Exploration Ltd. (Canadian Hunter), acting as agent for its parent, Noranda, Inc. (Noranda),^{1/} over a 20-year term beginning on or about June 30, 1990. The gas would be imported to fuel a new cogeneration facility to be constructed and operated by the applicant within the city of Syracuse, New York.

Under the import proposal set forth in its application, G.A.S. Orange would import Canadian natural gas in accordance with the provisions of a long-term gas purchase agreement dated December 8, 1987, between Gas Alternative Systems, Inc., an affiliate of G.A.S. Orange, and Noranda. The affiliate's interests were assigned to G.A.S. Orange on December 29, 1987. Noranda will deliver the natural gas into the pipeline facilities of NOVA Corporation of Alberta (NOVA) for transportation to the Alberta/Saskatchewan border. From there, the natural gas will be transported by TransCanada Pipelines Limited (TransCanada) to the interconnection of TransCanada's facilities with those of Tennessee Gas Pipeline Company (Tennessee) at the Canadian/United States border near Niagara Falls, Ontario. Tennessee will transport the gas from the border to a proposed connection tap point on its system south of Syracuse. G.A.S. Orange will construct a 35,000 foot, 12-inch connecting line from this tap point to the cogeneration facility.

Construction of the cogeneration facility was scheduled to begin on June 1, 1988, and, if the schedule is maintained, should be completed on or about June 30, 1990, at which time the initial delivery of natural gas would take place. It is estimated that the facility would consume approximately 19,000 Mcf of gas per day. The facility will be designed to produce 80 megawatts (net) of electricity to be sold to Niagara Mohawk Power Corporation, and

approximately 31 megawatts (equivalent) of thermal energy to be sold to Syracuse University and other educational and medical institutions.

Under the terms of the agreement, Noranda will supply the applicant a maximum contract quantity of 120,000,000 MMBtu's (approximately 120 Bcf) of natural gas over a 20-year term beginning on or about June 30, 1990, when the cogeneration facility is completed. Noranda agrees to deliver a maximum annual quantity of 9,000,000 MMBtu's and a maximum daily quantity of 30,000 MMBtu's of natural gas to the border point of delivery. G.A.S. Orange will forfeit all natural gas not delivered under the contract at the end of the 20-year term. However, G.A.S. Orange anticipates that all gas imported under this authority will be consumed at its cogeneration facility. Furthermore, the contract permits G.A.S. Orange to request that Noranda market, either in Canada or in the United States, up to 4,500,000 MMBtu's each year and refund the net proceeds from such sales.

G.A.S. Orange agreed to purchase the natural gas from Noranda with a single lump-sum prepayment of \$70,000,000. Under the contract, this lump-sum amount escalated to \$73,834,000 through four price increments since the payment was not made within certain stated time frames ending July 11, 1988. On August 18, 1988, the parties agreed to extend the July 11 date to October 11, 1988. In addition to the lump-sum payment, G.A.S. Orange will pay Noranda a \$.30 per MMBtu fee to cover all production, gathering and processing costs. Beginning on January 1, 1989, this fee is to be adjusted annually for inflation. Noranda will have the right to update this fee based on its actual production, gathering and processing costs prior to the start of the sixteenth contract year. The agreement requires G.A.S. Orange to reimburse Noranda for all gas royalty payments levied by Canadian authorities and to pay Noranda for all transportation costs charged by NOVA and TransCanada for moving the gas to border interconnections with Tennessee's facilities.

G.A.S. Orange asserts that its import arrangement is and will remain competitive over the contract term because its lump-sum commodity payment to Noranda locks in a large quantity of gas for 20 years at a favorable price. In this regard, the applicant states that initially it contacted several domestic sources of gas supply and was unable to identify any producer interested in a long-term agreement with a fixed commodity price. Further, G.A.S. Orange notes that the contract escalation mechanism applicable to production, gathering and processing costs should provide for a "gradual, relatively predictable increase" in these gas costs over the contract term.

According to the application, although the agreement does not provide for the dedication of specific reserves, Noranda has represented to G.A.S.

Orange that it has a gas deliverability of 500,000 Mcf (551,500 MMBtus) per day and proven and probable reserves, which are expanding, in excess of two Tcf. Further, G.A.S. Orange asserts that its proposed import will not have adverse environmental impacts. According to G.A.S. Orange, any environmental impacts resulting from construction of the 35,000 foot, 12-inch tapline will be considered by the New York Public Service Commission in the context of a proceeding under Article VII of the Public Service Law of the State of New York. G.A.S. Orange also states that the domestic transportation of its gas through the Tennessee system will require that company to construct additional pipeline facilities. On January 15, 1988, Tennessee filed with the Federal Energy Regulatory Commission (FERC) for permission to build those facilities.^{2/}

G.A.S. Orange's cogeneration facility is certified by the FERC as a "qualifying facility" (QF) under the Public Utility Regulatory Policies Act of 1978 (PURPA).^{3/} A QF can sell its electrical output to an electric utility pursuant to special sale conditions established by PURPA and implemented through the FERC and the public utility commission of the state in which the facility is located, in this instance, New York. G.A.S. Orange has filed a Certification of Compliance with the coal capability requirement for its proposed new electric powerplant pursuant to the Powerplant and Industrial Fuel Use Act of 1978, as amended.^{4/}

The ERA issued a notice of this application on February 26, 1988, inviting protests, motions to intervene, notices of intervention, and comments to be filed by April 4, 1988.^{5/} A motion to intervene without comment or request for additional procedures was filed by Niagara Mohawk Power Corporation. This order grants intervention to this movant.

II. Decision

A. Section 3 Considerations

The application filed by G.A.S. Orange 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."^{6/} The Administrator is guided by the DOE's natural gas policy guidelines.^{7/} Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test. The Administrator also considers, particularly in long-term arrangements such as this, need and the security of the imported supply.

The ERA has determined that the import arrangement proposed by G.A.S.

Orange is consistent with the DOE policy guidelines. The applicant has negotiated a supply of gas which it believes will meet the needs of the proposed cogeneration facility under the terms and conditions it considers necessary for the successful operation of its facility over the term. It has agreed to buy a twenty-year supply of natural gas at a fixed, lump-sum commodity price that is to be paid before a molecule of gas flows through the various transporting pipelines to the facility site. Under the escalation provisions of the contract, the lump-sum commodity charge has escalated to \$72,856,000 because of the extended date for the payment to Noranda. At this sum, the commodity charge will be about \$.61 per Mcf if the total contract volume is taken over the 20-year term.

The ERA finds this arrangement to be competitive. Although the commodity pricing provisions of this import agreement depart from customary provisions focused on by the ERA that permit fluctuation in response to market changes, the agreement results from the arms-length negotiations of the parties to the arrangement and reflects a balancing of their respective commercial interests. The applicant has bargained to pay up front for the commodity at a fixed and favorable rate in order to obtain a long-term supply commitment. In addition, the agreement gives G.A.S. Orange the flexibility to request that Noranda market elsewhere up to 4,500,000 MMBtu's of its natural gas each year, or 50 percent of the annual contract quantity, and refund the net proceeds from such sales to G.A.S. Orange. The agreement also contains an arbitration procedure which either party can initiate.

Further, G.A.S. Orange has demonstrated a need for the gas. Under the policy guidelines, imported gas that is shown to be competitive gives rise to a presumption of need. The presumption, applicable here, is uncontested in this proceeding and is supported by the applicant's assertion that it was unable to interest a domestic producer in a long-term agreement that provided for an acceptable fixed commodity price.

With respect to the security of the gas supply over the term of the import arrangement, G.A.S. Orange states that Noranda has represented to it that the company has a deliverability of 500,000 Mcf per day and proven and probable gas reserves in excess of two Tcf and is expanding. No party has disputed the security of the supply supporting this import arrangement. The ERA concludes that the proven reserves owned or controlled by Noranda will provide a secure supply of natural gas to G.A.S. Orange over the term of the requested authorization.

Finally, we note that this is a request for authorization to import natural gas to fuel a combined-cycle cogeneration facility. With the enactment

of PURPA, Congress sought to encourage the development and operation of such facilities as a matter of national energy policy. The import arrangement proposed by G.A.S. Orange would serve as the primary fuel source for and, according to the applicant, would facilitate the development of the project, and thus is in accord with PURPA policy.

B. Environmental Determination

By letter dated April 18, 1988, the attorney for G.A.S. Orange advised the ERA that the company is applying for permits involving environmental reviews with the following state agencies:

1. Public Service Commission of the State of New York for construction of its interconnecting tapline from the Tennessee Gas pipeline to the plant.
2. New York State Department of Environmental Conservation for two permits relating to air quality standards and permissible levels of discharges into the atmosphere.
3. Onondaga County Department of Drainage and Sanitation for a permit setting standards with respect to the waste water expected to be discharged from the new facility, and
4. City of Syracuse for approval of the site plan, building permits and work in the adjacent city streets.

In accordance with the provisions of New York's State Environmental Quality Review Act, G.A.S. Orange advises that the City of Syracuse will assume "lead agency status" for coordinating the state's environmental review of the project.

The National Environmental Policy Act of 1969 (NEPA) 8/ requires federal agencies to give appropriate consideration to the environmental effect of their proposed actions. G.A.S. Orange's proposed project requires the issuance of several major federal permits and authorizations before the project can proceed, among them, the ERA's authorization under Section 3 of the NGA to import gas from Canada to be used at the proposed plant and the FERC's authorization under Section 7 of the NGA permitting Tennessee to upgrade and extend its existing pipeline facilities to transport the imported gas to the plant area. The FERC has the lead in preparing the environmental analysis required to assess the impacts of constructing and operating Tennessee's new transmission facilities. When the appropriate environmental documentation is

completed by the FERC, the ERA will independently review the analysis and take appropriate action to complete the DOE's NEPA responsibilities. The approval of this import authorization is therefore being conditioned on completion of the environmental review of those facilities. At that time, 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. However, 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.

C. Conclusion

After taking into consideration all of the information in the record of this proceeding and in the absence of opposition to G.A.S. Orange's proposal, I find that granting G.A.S. Orange conditional authorization to import up to 120,000,000 MMBtu's (approximately 120 Bcf) of natural gas over a 20-year term in accordance with the provisions of its gas purchase agreement with Noranda dated December 8, 1987, 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. Subject to the condition in Ordering Paragraph B, G.A.S. Orange Development, Inc. (G.A.S. Orange), is authorized to import up to 120,000,000 MMBtu's (approximately 120 Bcf) of Canadian natural gas over a 20-year term beginning on or about June 30, 1990, in accordance with a gas purchase agreement dated December 8, 1987, between Noranda, Inc., the supplier, and Gas Alternative Systems, Inc., an affiliate of G.A.S. Orange (which was assigned to G.A.S. Orange on December 29, 1987).

B. The importation of the volumes authorized in Ordering Paragraph A is conditioned upon the issuance of a final Economic Regulatory Administration opinion and order after review by the Department of Energy (DOE) of the environmental documentation being prepared by the Federal Energy Regulatory Commission and the completion by the DOE of its responsibilities under the National Environmental Policy Act.

C. G.A.S. Orange shall notify the ERA in writing of the date of first

delivery of natural gas authorized in Ordering Paragraph A above within two weeks after deliveries begin.

D. G.A.S. Orange shall file with the ERA within 30 days following each calendar quarter, quarterly reports showing, by month, the total volume of natural gas imports in Mcf and the average purchase price per MMBtu at the international border. The monthly price information shall provide a breakdown of all gas costs including the applicable gathering, production and processing charges, Canadian and domestic transportation charges and G.A.S. Orange's share of the applicable Canadian and U.S. export/import taxes and fees. When applicable, G.A.S. Orange shall report, by month, the quantities of its imported natural gas that it requested Noranda to market elsewhere and the U.S. dollar amount received from Noranda for such sales.

E. The motion to intervene, as set forth in this Opinion and Order, is hereby granted, provided that participation of the intervenor shall be limited to matters specifically set forth in its motion to intervene and not herein specifically denied, and that admission of such intervenor 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. G.A.S. Orange and intervenors in this proceeding shall be bound by any opinion and order issued in such subsequent proceedings.

Issued in Washington, D.C., on October 17, 1988.

--Footnotes--

1/ The National Energy Board of Canada recently granted Canadian Hunter a 20-year license to export a total of 120 Bcf of natural gas to G.A.S. Orange.

2/ Tennessee submitted on "Open Season" filing at the FERC in Docket No. CP88-173.

3/ 16 U.S.C. 824a-3.

4/ 42 U.S.C. 8311, Sec. 201.

5/ 53 FR 6883, March 3, 1988.

6/ 15 U.S.C. Sec. 717b.

7/ 49 FR 6684, February 22, 1984.

8/ 42 U.S.C. 4321, et seq.