

Cited as "1 ERA Para. 70,829"

Poco Petroleum, Inc. (ERA Docket No. 88-50-NG), December 23, 1988.

DOE/ERA Opinion and Order No. 287

Order Granting an Authorization to Import Natural Gas from Canada;
Conditional Order Granting an Authorization to Import Natural Gas from Canada

I. Background

On August 25, 1988, Poco Petroleum, Inc. (POCO), 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) and DOE Delegation Order No. 0204-111, for authorization to import from its Canadian parent company, Poco Petroleums, Ltd. (Poco Ltd.), up to 15 MMcf per day of natural gas from the date the authorization is granted through October 31, 1989; up to 25 MMcf per day, from November 1, 1989, through April 30, 1990; up to 50 MMcf per day, from May 1, 1990, through October 31, 2004; and up to 25 MMcf per day, from November 1, 2004, through March 31, 2005. Poco would import the gas as agent for its Canadian parent and sell part of it to Consumers Power Company (Consumers) for Consumers' system supply. The remainder of the imported gas would be sold to Midland Cogeneration Venture Limited Partnership (Midland) for use as generation fuel at Midland's cogeneration facility to be constructed from a portion of the idled Midland nuclear plant in Midland County, Michigan. The gas imported for sale to Consumers and Midland respectively would constitute about four percent of Consumers' system supply and between 12 percent and 17 percent of the gas required to operate the Midland cogeneration facility.

Poco, a Delaware corporation and wholly-owned U.S. subsidiary of Poco Ltd., seeks to import the Canadian natural gas in accordance with two natural gas purchase agreements dated April 29, 1988, one between Poco Ltd. and Consumers and the other between Poco Ltd. and Midland. The gas to be imported under the Poco Ltd./Consumers agreement would enter the U.S. at the import point near Emerson, Manitoba, and would be transported by Great Lakes Transmission Company (Great Lakes) to an interconnection with the facilities of American Natural Resources (ANR) at Fortune Lake, Michigan, and then by an ANR to Consumers. According to the applicant, no new facilities are required to transport the imported gas to Consumers.

The gas to be imported under the Poco Ltd./Midland agreement would also enter the U.S. at the import point near Emerson, Manitoba, and would be

transported by Great Lakes to a new proposed delivery point in Chippewa Township, Isabella County, Michigan, between the pipeline facilities of Great Lakes and the pipeline facilities of Michigan Gas Storage Company (Michigan). From there, Michigan would deliver the gas to Midland. To transport the gas for delivery to Midland, Great Lakes proposes to add looping to approximately 83.2 miles of its 36-inch pipeline facilities. Transportation of the gas to the international border with respect to both gas purchase contracts would be provided by NOVA, an Alberta Corporation, and by TransCanada PipeLines, Ltd. (TransCanada).

Under the POCO Ltd./Consumers gas purchase agreement, POCO Ltd. would supply natural gas to Consumers as follows: up to 15 MMcf per day beginning as soon as the requested authorization is granted through October 31, 1989, and up to 25 MMcf per day during the remaining ten years of the contract term, which may be extended at POCO Ltd.'s option to March 31, 2005. The contract also provides that, if during any contract year, the volumes nominated for delivery by Consumers are less than 75 percent of the aggregate of the maximum daily quantities, then the maximum daily quantity which POCO is obligated to supply in the following year is reduced to 133 percent of the volumes nominated for delivery in the immediately preceding contract year.

The POCO Ltd./Consumers gas purchase contract further provides that the monthly contract price paid for the imported gas shall be composed of a monthly demand charge and a monthly commodity charge. The demand charge consists of the sum of the demand charges of the following pipeline transporters: TransCanada, Great Lakes and ANR. For the contract period prior to January 1, 1990, the computation of the monthly commodity charge is tied to a reference price set at 95 percent of the lowest interstate pipeline commodity charge incurred by Consumers or Michigan under a Federal Energy Regulatory Commission (FERC) approved sales tariff for firm contracts of two years or more. After December 31, 1989, the provision "at a 100 percent load factor" is added to the same formula. The actual commodity charge is computed by subtracting the total monthly demand charge from the reference price. For volumes in excess of 75 percent of the maximum monthly quantity, the commodity charge paid by Consumers would be lowered by subtracting the average monthly demand charge divided by .75 from the reference price.

Under the POCO Ltd./Midland gas purchase contract, POCO Ltd. would supply up to 25 MMcf per day of imported natural gas to Midland beginning on the date of first delivery in 1990 over a 15-year term or such earlier date as may be required by either U.S. or Canadian authorities. The maximum daily quantity which POCO Ltd. is obligated to supply is subject to reduction, as under the POCO Ltd./Consumers contract, if the volumes nominated for delivery

by Midland fall below 75 percent of the aggregate of the maximum daily quantities during the contract year.

Further, under the POCO Ltd./Midland contract, the monthly contract price paid for the imported gas consists of a monthly demand charge and a monthly commodity charge. The demand charge consists of the total monthly demand charges of TransCanada and Great Lakes. The commodity charge is tied to a reference price which the applicant states is consistent with Consumers' avoided cost rates for power production from "qualifying facilities" under Section 201 of the Public Utilities Regulatory Policy Act (PURPA).¹ The reference price would be computed as follows: \$.40 (U.S.) per MMBtu plus \$1.95 (U.S.) times a fraction with Midland's monthly fixed and variable expenses of producing electricity in the numerator and 2.29 cents (U.S.) per kilowatt hour in the denominator. The reference price, however, may not be less than a floor price set at \$1.78 per MMBtu as of January 1, 1987, compounded at four percent annually. The actual commodity charge Midland would pay for the imported gas would be computed by subtracting from the reference price the total monthly demand charges of TransCanada and Great Lakes divided by a factor of .75.

The applicant states that there are no minimum take or minimum commodity bills in either the POCO Ltd./Consumers or the POCO/Midland gas purchase agreements but the total monthly demand charges in the demand component of the two-part rate applicable to the imported gas must be paid regardless of the level of takes. If the firm transportation capacity which POCO Ltd. has contracted for is not fully used because either Consumers or Midland took less than the maximum contract quantity, then both contracts allow credit against the monthly demand charges under prescribed formulae for excess pipeline capacity which POCO Ltd. is able to sell to third parties. If excess pipeline capacity arises because POCO Ltd. has failed to deliver at least 90 percent of the sum of the daily quantities requested, then Consumers or Midland may have the excess pipeline capacity assigned to them in order to be able to mitigate the burden of demand charges they must pay regardless of the level of takes.

In the event of any monthly underdelivery of gas by POCO Ltd. under either the POCO Ltd./Consumers or POCO/Midland gas purchase contracts, the monthly demand charge is reduced in proportion to the amount of the underdelivery. In addition, POCO Ltd. is obligated to reimburse Consumers or Midland respectively for any additional costs incurred in obtaining alternate supplies of gas equal to the amount of the monthly underdelivery. Further, if during any period of at least 120 consecutive days, POCO Ltd. fails to deliver at least 90 percent of the sum of the daily contract quantities of gas requested by either Consumers or Midland, then either Consumers or Midland may reduce the maximum daily quantity to a quantity equal to the average daily

delivery of gas during such period; and may terminate their respective gas purchase agreements with POCO Ltd. altogether if the maximum daily quantity is or could be reduced under the above formula to an amount less than or equal to 50 percent of the initial maximum daily quantity.

In support of the application, the applicant asserts that the imported gas would be sold at market-sensitive prices over the term of the import arrangement and notes that under the price formulae in the gas purchase agreements, the combined commodity charge and demand charge components would not exceed reference prices set at the competitive gas or alternate energy levels. Further, the applicant asserts that the proposed import enhances the diversity of gas supplies for both Consumers and Midland who are free to purchase other natural gas as they may choose under the terms of their respective gas purchase agreements. With respect to need for the gas, the applicant notes that under a renegotiated contract with Trunkline Gas Company (Trunkline), Consumers' contract demand will be gradually reduced from the current 700 MMcf per day level to the 360 MMcf per day level as of November 1, 1989. With respect to Midland, the applicant points out that the proposed cogeneration plant would be a new gas-fired facility and therefore a new source of demand for natural gas.

The applicant asserts that security of supply is shown by the gas reserves which POCO Ltd. is required to dedicate to its gas supply obligations to Consumers and Midland in order to obtain gas removal permits from Canadian governmental authorities, and by POCO Ltd.'s corporate warranty in the gas purchase contracts under which POCO Ltd. must reimburse Consumers or Midland respectively for additional costs incurred in obtaining replacement gas for gas not delivered as agreed. Further, the applicant notes that the proposed import will provide diversification of supply sources to Consumers and Midland and that the imported gas would constitute only a small portion of the total gas supplies available to Consumers and Midland.

The ERA issued a notice of the application on September 16, 1988, inviting protests, motions to intervene, notices of intervention, and comments to be filed by October 24, 1988.² No response was received to this notice.

II. Decision

A. Section 3 Considerations

The application of POCO 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.^{3/} The Administrator is guided by the DOE's natural gas import policy guidelines.^{4/} Under these guidelines, the competitiveness of an import in the market served is the primary consideration in 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 POCO's uncontested import proposal, as set forth in the application, is consistent with the DOE policy guidelines. Both the POCO Ltd./Consumers and the POCO Ltd./Midland gas purchase agreements provide for flexibility which should assure the competitiveness of the POCO import proposal. The POCO Ltd./Consumers agreement ties the price of the imported gas to a monthly reference price based on the price of alternative gas supplies, i.e., to a reference price set at 95 percent of the lowest price paid by Consumers or Michigan to a competing pipeline supplier. The price of the imported gas under the POCO Ltd./Midland agreement also tracks the price of alternative sources of energy since the price is tied to a reference price which, according to the applicant, will reflect any changes in the net fuel equivalent of the avoided cost rate for generated power from qualifying facilities under Section 201 of PURPA, subject to a minimum floor price. No party has questioned the applicant's assertion.

Further, there are no minimum take or minimum bill provisions in the imported gas supply purchase agreements, and either Consumers or Midland respectively are free to purchase gas from other suppliers. While both Consumers and Midland are obligated to pay the demand charges for firm transportation service regardless of the level of takes, there are provisions in both contracts for reducing the demand charges for excess firm pipeline capacity which POCO Ltd. or, under certain circumstances, Consumers or Midland are able to sell to third parties. Accordingly, the ERA concludes that the proposed import should remain market-responsive over the term of the authorization requested.

POCO has also demonstrated that the gas is needed. Under the policy guidelines, imported gas that is shown to be competitive is presumed to be needed. This presumption is un rebutted in this proceeding and is supported by the fact that additional demand for gas will arise when Midland's new proposed cogeneration facility begins operation. As pointed out by the applicant, the reduction of Consumers' contract demand under its renegotiated gas supply contract with Trunkline will increase demand for gas under the proposed arrangement.

There is no dispute with respect to the security of Canadian gas

supplies. Canada has long been a secure source of supply. Security of supply is also shown by the requirement that POCO Ltd. must dedicate gas reserves to cover the gas supply obligations to Consumers and Midland in order to get Canadian gas removal permits, and by POCO Ltd.'s obligation to reimburse Consumers and Midland for any additional expenses incurred to obtain replacement gas for gas not delivered as agreed. In addition, the proposed import will provide diversification of supply sources to both Consumers and Midland. The ERA therefore finds that the proposed 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 term of the proposed import.

B. Environmental Determination

The National Environmental Policy Act of 1969 (NEPA)^{5/} requires Federal agencies to give appropriate consideration to the environmental effect of their proposed actions. According to the applicant, no new facilities will be required to import and deliver Canadian gas to Consumers per contract terms. Because this portion of the proposed import will use existing facilities, the ERA has determined that importing such gas for delivery to Consumers per contract terms is clearly not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA and therefore an environmental impact statement or an environmental assessment is not required.^{6/}

POCO's request for authority to import gas insofar as it relates to the POCO Ltd./Midland agreement involves the construction of certain new facilities and requires the issuance of several major Federal permits and authorizations. Among them is the ERA authorization under Section 3 of the NGA to import Canadian gas to be used at Midland's proposed cogeneration facility; POCO also has applied to the Federal Energy Regulatory Commission (FERC) for authorization under Section 7 of the NGA for Great Lakes to upgrade its existing facilities to transport the natural gas proposed for fueling the cogeneration facility. The FERC has the lead in preparing the environmental analysis required to assess the impacts of constructing and operating Great Lakes' new pipeline facilities. When the appropriate environmental documentation is completed by the FERC, the ERA will independently review the analysis and take the appropriate action to complete the DOE's NEPA responsibilities. The approval of the request to import natural gas for firm deliveries to Midland is therefore conditioned on completion of the environmental review of those facilities. At that time, the ERA will reconsider this conditional order and issue a final opinion and order.

C. Conclusion

After taking into consideration all of the information in the record of this proceeding, I find that granting POCO authority to import up to 15 MMcf per day of Canadian natural gas beginning on the effective date of the import authorization through October 31, 1989, and up to 25 MMcf per day beginning November 1, 1990, through March 31, 2005, in accordance with POCO Ltd.'s gas purchase agreement with Consumers, is not inconsistent with the public interest. I also find that granting POCO conditional authority to import up to 25 MMcf per day of Canadian natural gas beginning on the date of first delivery in 1990 through October 31, 2004, in accordance with POCO Ltd.'s gas purchase agreement with Midland, 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. POCO Petroleum Inc. (POCO) is authorized to import up to 15 MMcf per day of Canadian natural gas beginning on the effective date of this order through October 31, 1989, and up to 25 MMcf per day of Canadian natural gas beginning on November 1, 1989, through March 31, 2005, pursuant to the pricing and other provisions set forth in POCO Petroleum, Ltd.'s (POCO Ltd.) gas purchase agreement with Consumers Power Company submitted as part of POCO's application.

B. Subject to the condition in Ordering Paragraph C, POCO is authorized to import up to 25 MMcf per day of Canadian natural gas beginning on the date of first delivery in 1990 through October 31, 2004, pursuant to the pricing and other provisions set forth in POCO Ltd.'s gas purchase agreement with Midland Cogeneration Venture Limited Partnership submitted as part of POCO's application.

C. The authorization in Ordering Paragraph B is conditioned upon entry of an Economic Regulatory Administration (ERA) final 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.

D. POCO shall notify the ERA in writing of the date of first delivery of natural gas imported under Ordering Paragraphs A and B within two weeks after deliveries begin.

E. With respect to the imports authorized by this Order, POCO shall file with the ERA within 30 days following each calendar quarter, quarterly reports

showing by month and by contract the total volume of natural gas imports under each of the two gas purchase agreements with POCO Ltd. in MMcf and average price per MMBtu from each at the international border. The monthly pricing information shall include a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis under each gas purchase agreement with POCO Ltd.

Issued in Washington, D.C., on December 23, 1988.

--Footnotes--

1/ 16 U.S.C. 824a-3. The cogeneration facility was certified by the FERC as a qualified facility under PURPA, March 12, 1987, (FERC Docket No. QF87-237) based on a filing by CMS Midland, Inc., acting as agent for Midland.

2/ 53 FR 37029, September 23, 1988.

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

4/ 49 FR 6684, February 22, 1984.

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

6/ An import authorization for natural gas in cases not involving new construction is categorically excluded by the DOE from further documentation under NEPA (see 53 FR 29934, August 9, 1988).