

Cited as "1 ERA Para. 70,844"

Pepperell Power Associates (ERA Docket No. 87-71-NG), October 25, 1988.

DOE/ERA Opinion and Order No. 275

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

I. Background

On December 14, 1987, Pepperell Power Associates (PPA) 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 up to 9,795 Mcf per day of Canadian natural gas purchased from TransCanada PipeLines Limited (TransCanada) over a 15-year term beginning with the initial firm delivery of gas on or before July 1, 1991. The gas would be imported to fuel a new cogeneration facility to be constructed and operated by the applicant in Pepperell, Massachusetts. At the request of the ERA, PPA filed additional information supporting its application on February 9, 1988.

PPA seeks to import Canadian natural gas in accordance with the provisions of a November 25, 1987, precedent agreement and proposed gas purchase contract between itself and TransCanada. Under the terms of the agreement, TransCanada will supply PPA with gas at a point on the international border near Niagara Falls, Ontario, where TransCanada's facilities interconnect with those of the Tennessee Gas Pipeline Company (Tennessee), or at TransCanada's point of interconnection with Champlain Gas Pipeline Company (Champlain) at Highgate Springs, Vermont. The import point will depend on the outcome of applications filed by both Tennessee and Champlain at the Federal Energy Regulatory Commission (FERC) to transport gas in interstate commerce to service the Northeast section of the country, and to construct and operate certain related facilities; both applications include proposals to provide transportation services to PPA.^{1/} Either Tennessee or Champlain would transport the gas to Colonial Gas Company (Colonial), the local distribution company, for delivery to the cogeneration facility PPA proposes to construct at the James River Corporation's paper manufacturing plant site in Pepperell, Massachusetts.^{2/} The proposed facility will be designed to produce approximately 38 megawatts of electric power that Commonwealth Electric Company has agreed to buy, and a yearly average steam flow of about 41,000 pounds per hour to be sold to the James River Corporation for product processing and heating.

The cogeneration facility is scheduled to be completed and ready for testing during the fourth quarter of 1989 at which time the initial delivery of natural gas for test purposes would take place. Under the gas purchase agreement, the 15-year term begins on the date of the initial firm delivery of up to the daily contract quantity (DCQ) of 9,795 Mcf. The date of initial firm delivery is defined as the earlier of the date the cogeneration facility is ready to be occupied and operated commercially, or the date six months after the date that all facilities required by TransCanada and the domestic transporter to deliver and transport the DCQ to PPA on a firm basis have been constructed and are operational (on or before January 1991). PPA is required to take or pay for 50 percent of the annual contract quantity (ACQ), or the sum of the DCQ, each contract year. If minimum volumes are not taken in any year, PPA must purchase from TransCanada in the next year 50 percent of the ACQ plus a quantity of gas (the deficiency volume) equal to the difference between 50 percent of the ACQ and the quantity actually taken in the preceding year. If PPA does take less than 50 percent of the ACQ during the year for any reason other than unscheduled outages at its facility, TransCanada may renegotiate for a reduction in the DCQ.

The gas purchase contract between PPA and TransCanada establishes an initial border price of \$2.20 based on a two-part demand-commodity rate structure. The demand component will equal \$26.46 per Mcf per month or \$.87 per Mcf at 100 percent load factor, and will be adjusted to reflect changes in the monthly demand tolls for firm transportation on the pipeline systems of TransCanada and NOVA, an Alberta Corporation.

The commodity component will be the greater of \$1.20 per MMBtu or an amount determined by the following formula, indexed to the price of No. 6 residual fuel oil: commodity charge = $(\$1.20 \times AFC / \$18.05 + TC - ERCA)$. AFC is the greater of \$18.05 or the average of the highest and lowest prices for No. 6 residual fuel oil with a 2.2 percent sulphur content as reported in the Journal of Commerce under the heading, "N.Y. Harbor Cargo Prices--Fuel Oil" for all Wednesdays during the immediately preceding month. TC is a transportation credit equal to half of the difference, if any, between PPA's domestic transportation cost per MMBtu at 85 percent load factor and \$1.00;^{3/} and ERCA represents an Exchange Rate Commodity Adjustment per MMBtu. That factor converts the demand charge rate for total heating value of gas delivered each month from U.S. dollars to Canadian dollars. The ERCA may be a negative amount.

In support of its application PPA asserts that its gas purchase agreement for an imported supply represents the best overall supply arrangement it could secure to meet its needs on a long-term, firm supply

basis. PPA states that after an extensive search for a domestic supply, it could not find a long-term supplier offering an economical price for natural gas that was tied to the price of No. 6 fuel oil. PPA considers the index and the competitive base price critical factors in the economic viability of its new cogeneration project which is sited at a plant now served by a boiler facility capable of burning No. 6 fuel oil.

PPA further asserts that the proposed facility will supply power to a region which currently is experiencing a shortage of peak period electric generating capacity and which is projected to experience power shortages by 1991. In addition, PPA notes that natural gas is an environmentally preferable fuel for electric generation.

PPA furnished with its amended application a copy of a letter from the Director, Electric Power Division, Department of Public Utilities, the Commonwealth of Massachusetts, addressed to the Commonwealth Electric Company approving its contract with PPA to purchase the electricity generated by PPA's proposed cogeneration facility. PPA also filed with the ERA a Certification of Compliance^{4/} pursuant to the Powerplant and Industrial Fuel Use Act (FUA).^{5/}

The ERA issued a notice of this application on March 16, 1988, inviting protests, motions to intervene, notices of intervention, and comments to be filed by April 22, 1988.^{6/} Motions to intervene without comments or requests for additional procedures were filed by Western Gas Marketing Limited, Texas Eastern Transmission Corporation and Champlain Pipeline Company. This order grants intervention to all movants.

II. Decision

A. Section 3 Considerations

The application filed by PPA has been evaluated to determine if the proposed import arrangement meets the public interest requirement 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."^{7/} The Administrator is guided by the DOE's natural gas import policy guidelines.^{8/} Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test. Other considerations, particularly in long-term arrangements such as this, include, but are not limited to, need and the security of the imported supply.

The ERA has determined that PPA's proposed import arrangement is consistent with DOE's policy guidelines. PPA has negotiated a firm, long-term

supply of natural gas at a price indexed to a competing fuel over the life of the purchase contract. The pricing formula should protect PPA from paying above-market prices for the gas. Further, PPA 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. This uncontested presumption is provided additional support by PPA's assertions, also uncontested in this proceeding, that growth in demand for electricity in the Northeast will outpace additions of new baseload generation and that PPA was unable to negotiate a comparable overall arrangement for the long-term domestic supply of natural gas.

There is no dispute with respect to the security of the Canadian supply of natural gas, nor of the ability of TransCanada, an established Canadian supplier, to fulfill its commitment to PPA. TransCanada advised PPA that it has approximately 2,700 gas purchase contracts with some 700 producers in the Province of Alberta holding 18,600 gas wells providing firm dedicated gas reserves to TransCanada of 26.4 Tcf over a 24-year reserve life index. Accordingly, the ERA finds that this 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 term.

Finally, PPA intends to consume the gas imported under this arrangement at a cogeneration project which has been certified by the FERC as a "qualifying facility" in accordance with the Public Utility Regulatory Policies Act of 1978 (PURPA).^{9/} Congress, in enacting PURPA, intended to encourage the development and operation of cogeneration facilities as a matter of national energy policy. This import arrangement provides for the fixed-cost, long-term gas supply commitment which the applicant states is necessary for financing the cogeneration facility, and thus is in accord with PURPA policy.

B. Environmental Determination

The National Environmental Policy Act of 1969 (NEPA) ^{10/} requires federal agencies to give appropriate consideration to the environmental effect of their proposed actions. The issuance of several major permits and authorizations are required before PPA's proposed project can proceed; among them is the ERA authorization under Section 3 of the NGA to import gas from Canada to be used at the cogeneration facility and the FERC authorization under Section 7 of the NGA for Tennessee or Champlain to upgrade and extend its existing pipeline facilities to transport the natural gas proposed to fuel the powerplant. The FERC has the lead in preparing the environmental analysis required to assess the impacts of constructing and operating Tennessee's or Champlain's 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 this import of natural gas is therefore being 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.

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 the information in the record of this proceeding, I find that granting PPA conditional authority to import up to 9,795 Mcf per day and up to 53,627,625 Mcf of Canadian natural gas over a 15-year period beginning on the date of initial firm delivery in accordance with the provisions of its gas purchase agreement with TransCanada 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, Pepperell Power Associates (PPA) is authorized to import up to 9,795 Mcf per day and up to a total of 53,627,625 Mcf of Canadian natural gas from TransCanada PipeLines Limited over a 15-year period beginning on the date of initial firm delivery pursuant to the pricing and other provisions set out in the proposed gas purchase contract submitted as part of its application.

B. The authorization in Ordering Paragraph A is conditioned upon entry of an Economic Regulatory Administration (ERA) final opinion and order after review by the DOE of the environmental documentation being prepared by the Federal Energy Regulatory Commission and the completion by the DOE of its NEPA responsibilities.

C. PPA shall notify the ERA in writing of the date of initial firm 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, PPA 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 pricing 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. PPA 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 25, 1988.

--Footnotes--

1/ Both Tennessee and Champlain submitted "Open Season" filings at the FERC in Docket Nos. CP88-173-000 and CP88-169-000, respectively.

2/ PPA notes that if Tennessee becomes PPA's transporter, Colonial would need to upgrade a portion of its system for which it would need authorization from the Massachusetts Energy Siting Council and possibly from the city of Pepperell. No Colonial system upgrade would be needed if Champlain becomes the transporter.

3/ PPA estimates the dollar cost per Mcf of the domestic transportation of its natural gas under offers it has received from Champlain and Tennessee as follows:

	Champlain	Tennessee
U.S. Transportation62	.97
Colonial (local)14	.09
Total ...	\$.76	\$1.06

4/ See Notice of Certification, 52 FR 48751, December 24, 1987.

5/ 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). FUA requires that each new base load electric powerplant must have the ability to burn coal or another alternate fuel as its primary energy source. In the case of a new base load electric powerplant proposing to use natural gas or petroleum as a primary energy source, FUA requires the owner or operator to self-certify the alternate fuel burning capability of the powerplant. If such certification cannot be made, the owner or operator must obtain an exemption from the provisions of FUA to burn natural gas or petroleum in such a facility.

6/ 53 FR 9476, March 23, 1988.

7/ 15 U.S.C. 717b.

8/ 49 FR 6684, February 22, 1984.

9/ 16 U.S.C. 824a-3.

10/ 42 U.S.C. 4321, et seq.