Cited as "1 FE Para. 70,217"

Vector Energy (U.S.A.) Inc. (ERA Docket No. 88-63-NG), April 24, 1989.

DOE/FE Opinion and Order No. 308

Order Granting a Long-Term Authorization to Import Natural Gas From Canada

I. Background

On October 12, 1988, Vector Energy (U.S.A.) Inc. (Vector) 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. 0204-111,1/ for authorization to import up to 36,500 Mcf per day and a maximum amount of 13.14 Bcf per year of Canadian natural gas. The imports would commence on December 1, 1989, and continue for a term of 20 years through November 30, 2009.2/ Vector, a Delaware corporation, is a wholly-owned subsidiary of Vector Energy, Inc., with its principal place of business in Calgary, Alberta. The principal business of Vector is that of an oil and gas producer and marketer with markets in the U.S. and Canada.

The gas would be imported to fuel a new 162-megawatt cogeneration facility to be constructed and operated by Altresco Inc. (Altresco) a Colorado corporation. The cogeneration facility will be located at the General Electric manufacturing and research facility in Pittsfield, Massachusetts, and is scheduled to commence operation in December 1989. Electric power generated from the cogeneration facility will be sold to the New England Power Company.

Vector requests authority to import the Canadian gas as agent for seven Alberta producers for sale to Altresco on both a firm and an interruptible basis under two long-term gas purchase contracts between the producers and Altresco which were submitted with Vector's application. One, dated June 24, 1988, is between Altresco, Vector, and six producers (Westmin Resources Limited, Total Petroleum Canada Ltd., Ulster Petroleums Ltd., Canadian Pioneer Energy Inc., Trans-Canada Resources Ltd., and Opinac Exploration Limited). The other, dated June 29, 1988, is between Altresco and Wainoco Oil Corporation, the seventh producer. Together, the contracts call for maximum daily quantities of firm gas deliveries of up to 31,500 Mcf based on a 75 percent load factor over the life of the agreement. In addition to these firm supplies, the contracts call for additional interruptible volumes of up to 4,500 Mcf per day. In lieu of a minimum purchase obligation, each contract contains a provision which allows the producers to reduce the daily contract quantities (DCQ) by up to 20 percent if during the preceding two years Altresco does not buy at least 75 percent on average of the DCQ then in effect during such period. Altresco then can either accept the reduction of the DCQ or maintain the existing DCQ and pay a prospective reservation fee.

Provisions in each contract stipulate that both firm and interruptible gas supplies would be sold to Altresco in accordance with a two-part, commodity and transportation costs rate structure. The commodity charge is computed each month by multiplying a base price, initially $1.12 (U.S.) per MMBtu, by a fraction consisting of the weighted average cost of a mix of coal, natural gas, and No. 6 residual fuel oil in the numerator and $2.16 (U.S.) per MMBtu in the denominator. The transportation component of the two-part rate would recover the cost of pipeline transportation in Canada.

Each contract provides that Altresco's base price can be renegotiated upon 180 days notice by either party of dissatisfaction with the gas price then in effect. The price will be reviewed to achieve a gas price that, including cost of transportation, is competitive with and comparable to the prices paid for long-term, firm baseload supplies of gas delivered at the city-gate to local distribution companies in Connecticut, Massachusetts, and Rhode Island. Alternatively, the review will achieve a gas price that will allow Altresco to run as a baseload fossil fuel electric generating plant operating at a 75 percent capacity factor. In the event that these two methods of review are in conflict, the latter method shall prevail.

According to Vector, the gas would enter the U.S. at a point on the international border near Niagara Falls, New York, where the pipeline facilities of TransCanada PipeLines Limited (TransCanada) interconnect with those of Tennessee Gas Pipeline Company (Tennessee). Altresco has negotiated with Tennessee to delivery the gas through existing pipeline facilities to the CNG Transmission Corporation (CNG) interconnection with Tennessee at Marilla, New York. CNG would transport and redeliver the gas to Tennessee at Morrisville, New York. Tennessee would then provide transportation to an interconnection to be established with Berkshire Gas Company (Berkshire Gas) near Pittsfield. Berkshire Gas, a local distribution company, will complete ultimate delivery to the cogeneration facility by means of an 11.5-mile segment of pipeline to be built as part of the cogeneration facility project.3/

In support of its application, Vector contends that its requested authorization is in the public interest and complies with the DOE's policy guidelines on regulation of imported gas because it will provide the cogeneration facility with a competitively priced, secure supply of gas.

A notice of this application was issued on November 10, 1988, inviting protests, motions to intervene, notices of intervention, and comments to be filed by December 28, 1989.4/ No interventions or comments were received.

II. Decision

The application filed by Vector has been evaluated to determine if the proposed import arrangement meets the public interest requirements of Section 3 of the NGA. Under Section 3, imports must be authorized unless there is a finding that they "will not be consistent with the public interest." 5/ This determination is guided by the DOE's natural gas import policy guidelines.6/ Under these guidelines, 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.

The DOE guidelines state that the competitiveness of an import arrangement will be assessed by a consideration of the arrangement taken as a whole. 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. Vector's uncontested proposal for importing gas, as set forth in the application, is consistent with the DOE policy guidelines.

Vector has freely negotiated two gas purchase agreements with terms that provide flexibility to the import arrangement and help ensure that it will be market responsive. Specifically, the price for the gas is indexed to track the cost of alternate fuels in the Northeast. In addition, the contracts contain price renegotiation provisions that are also designed to ensure that the imported gas will be competitive with domestic supplies of natural gas and other fuels. Therefore, we find that the import arrangement will be competitive over the term of the contracts.

Further, need for the gas has been demonstrated. Under the policy guidelines, imported gas that is shown to be competitive is presumed to be needed. This presumption is unrebutted in this proceeding. Additionally, Vector asserts in its application that it was unable to secure competitively priced long-term gas from domestic producers.

There is no dispute with respect to the security of the Canadian gas supplies nor of the ability of any of the gas suppliers to provide the gas to Vector. Reliability of the Canadian supplies is further supported by the contractual warranty obligations, under which the suppliers must deliver the daily firm contract quantities or suffer the penalty of having to reimburse Vector for any additional costs incurred in obtaining alternate supplies of gas to replace the delivery shortfall. Accordingly, the DOE 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 term of the proposed import.

After taking into consideration all of the information in the record of this proceeding, I find that granting Vector authority to import up to 36,500

Mcf per day and a maximum of up to 13.14 Bcf per year of Canadian natural gas beginning December 1, 1989, through November 30, 2009, 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. Vector Energy (U.S.A.) Inc. (Vector), is authorized to import at Niagara Falls, New York, up to 36,500 Mcf per day and a maximum of up to 13.14 Bcf per year of natural gas from Canada during the period beginning December 1, 1989, through November 30, 2009, in accordance with the arrangement proposed in the application in this proceeding as discussed in this Opinion and Order.

B. With respect to the imports authorized by this Order, Vector shall file with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, within 30 days following each calendar quarter, quarterly reports showing by month, and by contract, 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/transportation charge breakdown on a monthly and per unit (MMBtu) basis.

Issued in Washington, D.C., April 24, 1989.

--Footnotes--

1/ On January 6, 1989, the authority to regulate natural gas imports and exports was transferred from the ERA to the Assistant Secretary for Fossil Energy. DOE Delegation Order No. 0204-127 specifies the transferred functions (54 FR 11436, March 20, 1989).

2/ After the ERA's notice of the application was published in the Federal Register, Vector, in a letter dated December 9, 1988, amended its application, changing the yearly amount of gas proposed to be imported from 15 Bcf to 13.14 Bcf and the term of the import from November 30, 2000, to November 30, 2009.

3/ Altresco has informed the DOE that in the future the imported gas may be delivered to the cogeneration facility through Tennessee's Niagara Spur Line if the added facilities Tennessee is proposing to build are installed. See Federal Energy Regulatory Commission Docket No. CP88-171-000.

4/ 53 FR 47857, November 28, 1988.

5/ 15 U.S.C. 717b.

6/ 49 FR 6684, February 22, 1984.