

Cited as "1 FE Para. 70,218"

Hydro Engineering, Inc. (ERA Docket No. 88-19-NG), April 28, 1989.

DOE/FE Opinion and Order No. 309

Order Granting Authorization to Import Natural Gas from Canada

I. Background

On April 6, 1988, Hydro Engineering, Inc. (Hydro Engineering), 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), for authorization to import from TransCanada PipeLines Limited (TransCanada) up to 8,250 Mcf per day of Canadian natural gas over a 15-year term beginning on the date of first delivery.^{1/} Hydro Engineering, a corporation organized under the laws of the State of Washington with its principal place of business in Tiburon, California, intends to import this gas on behalf of Ada Cogeneration, a partnership in which Hydro Engineering is a partner.^{2/}

The imported gas would be the primary source of fuel for a 29.4 megawatt (MW), combined-cycle cogeneration facility to be owned by Ada Cogeneration and built at the Amway World Headquarters office in Ada, Michigan. The cogeneration unit is expected to produce up to 80,000 lbs per hour of 100 psig process steam for use at Amway's office and manufacturing complex and 29.4 MW of electricity. All electricity produced by the facility would be purchased by Consumers Power Company (Consumers Power), located in Jackson, Michigan, under a 35-year power sales agreement dated June 29, 1987.

Hydro Engineering seeks to import this gas under a December 2, 1987, precedent agreement and proposed gas purchase contract between itself and TransCanada. The initial term of the proposed purchase contract is 15 years after delivery begins with provision for contract extensions in five-year increments through the 35-year term of the power sales agreement between Ada Cogeneration and Consumers Power. The contract provides for a daily contract quantity (DCQ) of 8,250 Mcf of gas subject to certain adjustments. Hydro Engineering may adjust the DCQ up or down (1) in any amount (not to exceed project requirements) prior to the initial delivery date, and (2) by 10 percent at any time within two years of the initial delivery date. This adjustment right is exercisable only once during each of the above periods. In addition, the contract stipulates that Hydro Engineering will purchase from TransCanada all of the gas required to supply the cogeneration facility.

The gas purchase contract establishes a two-part, demand-commodity border price. The demand component would be a monthly charge equal to the

daily contract quantity (DCQ) times the sum of the tolls for firm transportation of the gas on Canadian pipelines. The commodity charge would be comprised of a base charge (\$1.65 (U.S.) per MMBtu) multiplied by the price adjustment mechanism less a percentage of the demand charges. The price adjustment mechanism will reflect changes in the fuel and operating costs of existing and future coal-fired electric generating stations on Consumers Power's system.

According to Hydro-Engineering, if it does not purchase the daily contract quantities provided in the gas sales agreement with TransCanada, it will incur charges related to the cost of reserving pipeline capacity to transport this gas to the Ada cogeneration facility. These costs are in the form of (1) demand charges payable to TransCanada; (2) minimum monthly bill charges payable to Great Lakes Gas Transmission Company (Great Lakes); and (3) demand charges payable to ANR Pipeline Company (ANR). The transportation service agreement between Michigan Consolidated Gas Company (MichCon) and Hydro Engineering provides for a form of deposit, \$1.00 per Mcf, which is refundable at the end of each year for the volumes of gas not taken, minus an amount equal to the volume of alternate fuel, including natural gas, used by the Ada cogeneration facility during the year that was not delivered by MichCon. In addition, there is a commodity charge payable to Great Lakes of \$34,500 per month starting March 1, 1990, if Hydro Engineering has not yet commenced gas sales to the Ada facility. This charge will only be incurred if Hydro Engineering wishes to retain its firm capacity on Great Lakes pipeline at that time. Any gas purchase charges incurred will be reflected in the total cost of gas delivered to the Ada cogeneration facility.

The gas would be imported at the point of interconnection between the existing gas transmission facilities of TransCanada and Great Lakes near Emerson, Manitoba. It would then be delivered to ANR at ANR's Crystal Falls, Michigan, interconnection with Great Lakes. ANR would deliver the gas to the facilities of MichCon near Grand Rapids, Michigan, from where MichCon would deliver the gas to the site of the cogeneration facility. MichCon will construct as part of the cogeneration facility project, a 7,200 foot segment of 8-inch pipeline to deliver the gas from its mainline system to the Amway headquarters site or will upgrade the existing delivery pipeline which serves the headquarters to this size. In addition, MichCon will construct on the headquarters property approximately 1,000 feet of 8-inch service pipeline to the proposed cogeneration facility.

Construction of the cogeneration facility is scheduled to be completed by early 1990, at which time the initial delivery of natural gas would take place. Hydro Engineering estimates that the facility would begin taking the daily contract quantity of gas on or before March 1, 1992.

In support of its application, Hydro Engineering states that by linking

the price paid for the gas with the costs of producing alternate supplies of electricity on Consumer Power's system, its proposed arrangement should allow the imported gas and the price of electricity generated by the facility to remain cost competitive during the term of the gas purchase contract. Hydro Engineering asserts that it sought to negotiate with numerous domestic producers gas supply terms comparable to those contained in the proposed gas purchase contract agreed to by TransCanada, but that the majority declined to support the long-term nature and price adjustment mechanism provision in the contract.

A notice of this application was issued on June 27, 1988, inviting protests, motions to intervene, notices of intervention, and comments to be filed by August 4, 1988.^{3/} No interventions or comments were received.

Decision

The application filed by Hydro Engineering 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 is to be authorized unless there is a finding that it "will not be consistent with the public interest." ^{4/} This determination is guided by the DOE's natural gas import policy guidelines.^{5/} 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 for the gas and security of the imported supply.

Hydro Engineering's proposed import arrangement is consistent with the DOE's policy guidelines. The competitiveness of the imported gas is assured because the gas purchase contract contains a market-responsive pricing mechanism that indexes the monthly commodity price of the gas to track changes in the cost of generating electricity for coal-fired plants on Consumers Power's system over the life of the purchase contract. If Consumers Power's cost of generating electricity with coal-fired power plants goes up, the base price of the gas imported to fuel the Ada cogeneration facility will increase. Conversely, if the cost of producing electricity with coal-fired plants goes down, the imported gas price will decrease. Under the policy guidelines, imported gas that is shown to be competitive gives rise to a presumption of need. This presumption, uncontested in this proceeding, is provided additional support by Hydro Engineering's assertion that it was unable to interest a domestic producer in a long-term agreement that provided for an acceptable price adjustment mechanism.

With respect to the security of the Canadian gas supply over the term of the import arrangement, TransCanada's ability to fulfill its commitment to Hydro Engineering is also uncontested. In addition, TransCanada has

historically been reliable as a supplier of Canadian gas to the United States. Further, according to Hydro Engineering, the natural gas supply to support this project is 26.4 Tcf currently dedicated or otherwise available for delivery to TransCanada and/or its agent, Western Gas Marketing, Ltd. Finally, the gas purchase agreement between Hydro Engineering and TransCanada provides that deliveries to the Ada cogeneration facility cannot be curtailed unless TransCanada similarly curtails its existing Canadian and foreign customers. Accordingly, we find 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.

After taking into consideration all the information in the record of this proceeding, I find that granting Hydro Engineering authority to import 8,250 Mcf per day of natural gas for use as fuel at the Ada cogeneration facility during a term of fifteen years beginning on the date of the initial delivery 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. Hydro Engineering, Inc. (Hydro Engineering), is authorized to import up to 8,250 Mcf per day of Canadian natural gas from TransCanada PipeLines Limited over a 15-year period beginning on the date of first delivery in accordance with the arrangement proposed in the application in this proceeding as discussed in this Opinion and Order.

B. Within two weeks after deliveries begin, Hydro Engineering shall notify the Office of Fuel Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., 20585, in writing of the date that the first delivery of natural gas authorized in Ordering Paragraph A above occurred.

C. With respect to the imports authorized by this Opinion and Order, Hydro Engineering shall file with the Office of Fuels Programs 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 April 28, 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/ At the time the application was filed, Hydro Engineering and ADA Power Projects, Inc. (Ada Power), were general partners and Combustion Engineering, Inc. (Combustion Engineering), and Gary W. McPeak were limited partners in the Ada Cogeneration partnership. Since then, Ada Power and Combustion Engineering have terminated their participation in the partnership and the project.

3/ 53 FR 25203, July 5, 1988.

4/ 15 U.S.C. Section 717b.

5/ 49 FR 6684, February 22, 1984.