Cited as "1 FE Para. 70,241"

Consolidated Fuel Company (FE Docket No. 89-09-NG), September 22, 1989.

DOE/FE Opinion and Order No. 333

Order Granting Long-Term and Short-Term Blanket Authorization to Import Natural Gas from Canada and Granting Intervention

I. Background

On February 7, 1989, Consolidated Fuel Company (Consolidated Fuel) filed an application, as clarified on April 11, and August 8, 1989, with the Office of Fossil Energy (FE) 1/ of the Department of Energy (DOE), pursuant to section 3 of the Natural Gas Act (NGA), for authorization to import up to 6,000 Mcf of Canadian natural gas per day on a firm basis over a term of 15 years beginning on the date of commercial operation of the purchasing facility. The gas would be purchased from Direct Energy Marketing Limited (Direct Energy) to fuel a 28-megawatt combined-cycle electrical generating facility being constructed in East Georgia, Vermont, an area that currently only has access to Canadian gas. In addition, Consolidated Fuel requests authority to import from Direct Energy or other unidentified suppliers up to 500 Mcf of gas per day on a spot basis to supply the cogeneration facility during peak usage periods over an unspecified, but implicitly concurrent, term.

Consolidated Fuel, a Delaware corporation with its principal place of business in Norwalk, Connecticut, proposes to import gas for resale to Arrowhead Cogeneration Company Limited Partnership (Arrowhead), the owner and operator of the new cogeneration facility.2/ On November 16, 1987, this facility received certification from the Federal Energy Regulatory Commission (FERC) as a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978 (PURPA). The cogeneration facility will provide electrical power to the UNITIL Power Corporation (UNITIL) in Exeter, New Hampshire under a 20-year contract, and steam produced by the facility will be sold to a food processing plant owned by Wyeth Nutritional, Inc. The applicant anticipates that construction of the Arrowhead facility will be completed by July 1, 1990.

Direct Energy, a producer-owned Canadian marketing organization, would arrange for transportation of the gas in Canada on the pipeline systems of NOVA Corporation of Alberta, TransGas Limited, and TransCanada PipeLines Limited (TransCanada). The imported volumes would enter the U.S. at a point near Phillipsburg, Quebec, where the pipelines facilities of TransCanada interconnect with those of Vermont Gas Systems (Vermont Gas). Consolidated Fuel would take delivery of the gas at this point and arrange for its transportation by Vermont Gas to the cogeneration facility. The final three miles to the facility would be through a connecting pipeline to be constructed

by Vermont Gas.

Under the terms of a November 22, 1988, sales agreement, Consolidated Fuel has agreed to purchase from Direct Energy up to 6,000 Mcf of natural gas per day for a term of 15 years from the date of commercial operation of the facility. Unspecified volumes of "excess" gas, if available, may be purchased on an interruptible basis. Consolidated Fuel is required to take or pay for a minimum annual quantity equal to 80 percent of the daily contract quantity times the number of days in the year. In addition, the agreement calls for Consolidated Fuel to use reasonable efforts to purchase a minimum of 4,000 Mcf of gas per day.

The gas would be sold to Consolidated Fuel at a price which includes actual transportation charges for the gas on Canadian pipelines, compressor fuel and any take-or-pay cost sharing charges incurred by Direct Energy, and a commodity charge. The commodity charge would be indexed to the "weighted New England Power Pool (NEPOOL) average fossil fuel cost." NEPOOL, a large group of New England Utilities, calculates its pricing index on the weighted average cost for energy produced from fossil fuels to member utilities during the preceding month.3/ The commodity charge under the applicant's agreement with Direct Energy would be determined each month by multiplying $1.004 (U.S.) per Mcf by the ratio of the weighted NEPOOL average fossil fuel cost for the preceding month to that for the month of July 1988.

According to Consolidated Fuel, both downstream contracts, that is, its contract with Arrowhead and Arrowhead's power contract with UNITIL, are similarly indexed to NEPOOL. Consolidated Fuel believes this factor should help preserve its price margin and further minimize its risk as market conditions fluctuate. Consolidated Fuel indicates that the NEPOOL index formula would have resulted in a delivered commodity charge of $1.248 (U.S.) per MMBtu for February 1989. In that same month, Consolidated Fuel estimates that demand charges consisting of transportation and compressor fuel costs would have been $0.97 per MMBtu at a 100 percent load factor for a total price of $2.22 per MMBtu.

The November 22 agreement contains additional provisions which Consolidated Fuel claims affect the overall flexibility of the proposed import, including terms that: (1) provide for price arbitration whenever the NEPOOL weighted index is not available or not published; (2) allow Consolidated Fuel to terminate the agreement where force majeure conditions have continued for more than 60 days or where Direct Energy has failed to deliver scheduled deliveries for a total of 30 days in a 12-month period for reasons other than force majeure; (3) require Direct Energy to use best efforts to sell gas elsewhere when so requested by Consolidated Fuel and to credit any sales to Consolidated Fuel's minimum purchase obligations; and (4) provide generally for arbitration on matters covered by the purchase agreement.

Direct Energy would be supplying gas purchased from four producers in the Province of Alberta (Ranger Oil Limited, Blue Range Resources Limited, Royal Trust Energy Corporation and VenWest Resources Limited) and one Saskatchewan producer, Altana Exploration Company. According to Consolidated Fuel's application, the gas purchase agreement between Direct Energy and these producers requires the dedication of a minimum of 10.8 Bcf of specific gas reserves to meet Direct Energy's supply obligations to Consolidated Fuel, a figure representing five times the firm annual import contract volumes.

Finally, Consolidated Fuel argues that there would be no adverse environmental impact as a result of its proposal because no new pipeline construction other than a service hookup to the cogeneration facility is required which will be installed by Vermont Gas.

A notice of the application was issued on April 21, 1989, inviting protests, motions to intervene, notices of intervention, and comments to be filed by June 1, 1989.4/ A motion to intervene in support of Consolidated Fuel's application was filed by Vermont Gas. This order grants intervention to this movant.

II. Decision

The application filed by Consolidated Fuel has been evaluated to determine if the proposed import arrangement meets the public interest requirements of this 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." 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. Other considerations, particularly in long-term arrangements, include, but are not limited to, need for the gas and security of the imported supply.

Consolidated Fuel's import proposal, as set forth in the application, is consistent with DOE's import guidelines. The applicant has negotiated a firm, long-term supply of natural gas at a price indexed to a representative pool of competing fuels over the life of the purchase contract. The pricing formula should protect Consolidated Fuel from paying above market prices for the gas. In its review, the DOE has balanced Consolidated Fuel's rather substantial 80 percent take-or-pay obligation against this price adjustment mechanism and other flexible contract terms, including, principally, a broad arbitration provision and a take-or-pay crediting mechanism. The DOE has determined that the arrangement, taken as a whole, is competitive and should remain market-responsive over the 15-year term.

Under the policy guidelines, this finding of competitiveness gives rise

to the presumption of need. This uncontested presumption is provided further support by Consolidated Fuel's assertion that the area where the facility will be constructed has access only to Canadian gas.

The security of the Canadian gas supply, and the ability of Direct Energy, supported by its purchase contract with Canadian producers, to fulfill the long-term supply commitment are not disputed. As noted above, Consolidated Fuel's agreement with Direct Energy requires that Direct Energy maintain a reserve for Consolidated Fuel and its customers of 10.8 Bcf at all times during the term of the contract. Accordingly, the FE finds that security of supply has been established.

As part of its application, Consolidated Fuel has requested authority to import up to 500 Mcf of gas per day on a spot basis from either Direct Energy or other, unidentified suppliers. The DOE finds this blanket-type arrangement, when short-term in nature, to be inherently competitive,7/ and like here, when proposed as part of a long-term arrangement, to enhance the overall competitiveness of the import.8/ It is unclear whether Consolidated Fuel requests short-term authority or authority concurrent with the long-term firm import. However, consistent with precedent, DOE is limiting this portion of the authorization to a two-year period. This limitation will serve to protect the public from potential adverse consequences or contractual provisions that are not known and therefore are not scrutinized by FE at the time of authorization.9/ FE will consider a subsequent request from Consolidated Fuel to extend this authority for a successive two-year term beginning at the expiration of the term herein being granted. In addition, consistent with our current treatment of blanket applications, there will be no restriction on the daily volume that may be imported.

After taking into consideration all of the information in the record of this proceeding, I find that granting Consolidated Fuel authority to import up to 6,000 Mcf per day of Canadian gas over a 15-year term and blanket authority to import up to 365,000 Mcf of Canadian spot gas over a period of two years both beginning on the date of commercial operation, is not inconsistent with the public interest.

ORDER

For the reasons set forth above, under section 3 of the Natural Gas Act, it is ordered that:

A. Consolidated Fuel Company (Consolidated Fuel) is authorized to import up to 6,000 Mcf per day of Canadian gas on a firm basis from Direct Energy Marketing Limited (Direct Energy) at a point on the International border near Phillipsburg, Quebec, over a 15-year period beginning on the date of commercial operation in accordance with the provisions of the long-term gas

purchase agreement as set forth in the application.

B. Consolidated Fuel is further authorized to import, at any point on the international border where existing pipeline facilities are located, an aggregate of 365,000 Mcf of Canadian natural gas on a spot basis from Direct Energy and other suppliers over a term of two years beginning on the date of commercial operation.

C. Within two weeks after deliveries of the natural gas authorized in each of Ordering Paragraphs A and B begin, Consolidated Fuel shall notify the Office of Fuels Programs, 1000 Independence Avenue, S.W., Washington, D.C., 20585, in writing of the date that first delivery of natural gas authorized in Ordering Paragraphs A and B above occurred.

D. With respect to the imports authorized in Paragraph A of this Order, Consolidated Fuel shall file with the Office of Fuels Programs within 30 days following each calendar quarter, quarterly reports indicating for the long-term imports of natural gas, by month, the total volume of the imports in MMcf and the average purchase price per MMBtu at the international border.

E. With respect to the imports authorized in Paragraph B above, Consolidated Fuel shall file with the Office of Fuels Programs, 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 reports shall also provide the details of each transaction, including the names of the seller(s) and purchaser(s), including those other than Consolidated Fuel, estimated or actual duration of the agreement(s), transporters, points of entry, markets served, and if applicable, the demand/commodity charge breakdown of the price, and special contract price adjustment clauses, and any take-or-pay or make-up provisions.

F. The motion to intervene filed by Vermont Gas Systems Company is hereby granted, provided that its participation shall be limited to matters specifically set forth in its motion to intervene and not herein specifically denied, and that the admission of such intervenor shall not be construed as recognition that it may be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., on September 22, 1989.

--Footnotes--

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

2/ The owners of Arrowhead's general partner, Arrowhead Cogeneration Corporation, have an ownership interest in Consolidated Fuel.

3/ Consolidated Fuel does not anticipate wide fluctuations in the price it pays for gas. It notes that the NEPOOL index is based on approximately 78 percent usage of petroleum-based fuels, and approximately 22 percent on the usage of coal. The inclusion of coal, Consolidated Fuel maintains, will dampen the effect of unexpected increases in either gas or oil, thus keeping the price it pays Direct Energy for gas slightly below competing gas prices in the New England region.

4/ 54 FR 18692, May 2, 1989.

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

6/ 49 FR 6684, February 22, 1984.

7/ See e.g., Canterra Natural Gas Inc., 1 FE Para. 70,226 (June 19, 1989); Texas International Gas & Oil, 1 FE Para. 70,228 (June 19, 1989); Brymore Energy Inc., 1 FE Para. 70,229 (June 19, 1989); and Wisconsin Public Service Corp., 1 FE Para. 70,230 (June 19, 1989).

8/ See e.g., Texas Eastern Transmission Corporation, 1 ERA Para. 70,733 (October 30, 1987), rehearing denied, 1 ERA Para. 70,744 (December 30, 1987).

9/ See e.g., Tennessee Gas Pipeline Company, 1 ERA Para. 70,835 (January 11, 1989).