

Cited as "1 FE Para. 70,242"

Ocean State Power and Ocean State Power II (FE Docket No. 89-27-NG),  
September 22, 1989.

DOE/ERA Opinion and Order No. 334

Order Amending a Previous Authorization to Ocean State Power to Import  
Natural Gas from Canada and Granting Intervention

### I. Background

On November 19, 1986, Ocean State Power (Ocean State) filed an application with the Economic Regulatory Administration (ERA)<sup>1/</sup> of the Department of Energy (DOE), pursuant to section 3 of the Natural Gas Act (NGA), for authorization to import up to 100,000 Mcf per day of Canadian natural gas from ProGas Limited (ProGas) over a 20-year term beginning on the date of the first delivery. The imported gas would fuel Ocean State's new power plant which it plans to build in Burrillville, Rhode Island. The plant will be comprised of two 250 megawatt combined cycle electrical generating units to be constructed sequentially.<sup>2/</sup>

Ocean State entered into a precedent agreement with ProGas on April 17, 1986, which was amended March 3, 1988, to purchase up to 50,000 Mcf of gas per day during periods when only one of the combined cycle units is operational and up to 100,000 Mcf per day during periods when both units are operational.

On June 13, 1988, the ERA issued DOE/ERA Opinion and Order No. 243 (Order 243)<sup>3/</sup> in ERA Docket No. 86-62-NG, conditionally authorizing Ocean State to import up to 100,000 Mcf per day of Canadian natural gas over a 20-year period, beginning on the date of first delivery, to fuel the new power plant. The ERA found that Ocean State had freely negotiated a gas purchase agreement with terms that provide flexibility to the import arrangement and help ensure that it will be market responsive. Price renegotiation provisions and an arbitration clause are designed to ensure that the imported gas will be competitive in Ocean State's market throughout the 20-year term of the import proposal. The ERA found the arrangement to be competitive.

The ERA also found that there is a need for the proposed import and that ProGas has been historically reliable as a supplier of Canadian gas to the United States for many years. No party argued that ProGas' reserves are not secure. The ERA found that the security of supply was established and that the import would not lead to any undue dependency on an unreliable source of supply, nor compromise the energy security of the nation over the contract period. ERA conditioned the order on completion of DOE's review of the environmental analysis performed by the Federal Energy Regulatory Commission

(FERC) and on completion of DOE's National Environmental Policy Act (NEPA) responsibilities.

On September 14, 1988, after DOE's completion of its NEPA review, the ERA issued DOE/ERA Opinion and Order No. 243-A4/ (Order 243-A) in DOE/ERA Docket No. 86-62-NG, authorizing Ocean State to import from ProGas up to 100,000 Mcf per day of gas over a period of 20 years plus 180 days, beginning on the date of the first delivery, in accordance with the pricing and other provisions established in the proposed gas purchase contract submitted as part of its application.

On April 21, 1989, Ocean State and Ocean State Power II (Ocean State II) filed a joint application with the Office of Fossil Energy (FE) of the DOE to amend Order 243-A. The joint application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. According to the joint application, at the time Order 234-A was issued, Ocean State planned to construct, own, and operate both combined-cycle units. Ocean State currently plans to develop only the first unit, Unit 1, which will utilize 50,000 Mcf of gas per day. To facilitate financing of the project, Ocean State II was formed to develop the second unit, Unit 2. Ocean State II is a separate Rhode Island partnership comprised of companies that are affiliates of the partners in Ocean State. In view of the changed circumstances, Ocean State now requests that its existing authorization be amended to reduce by 50,000 Mcf the maximum daily volume of gas that it will import. Concurrently, Ocean State II requests authorization to import from Canada 50,000 Mcf per day in place of Ocean State--25,000 Mcf per day of the volumes that ProGas had originally committed to supply to Ocean State and 25,000 Mcf per day of gas from TransCanada Pipelines Limited (TransCanada)--as fuel for Unit 2.

In light of the fact that there are now two separate corporate entities, each responsible for only one of the two proposed power plants, the DOE has decided to issue separate orders to Ocean State and Ocean State II. This order addresses only Ocean State.

For Ocean State, the joint application included a new gas purchase contract between Ocean State and ProGas dated December 14, 1988, for 50,000 Mcf of gas per day for 20 years. Ocean State asserts that the substantive terms of the import arrangement, including price, demand and commodity charges, contract reduction, renegotiation and arbitration provisions, and point of delivery, remain the same as those approved by the ERA in Order 243-A. The price of the gas will be indexed to the New England Power Pool (NEPOOL) Fossil Fuel Index to ensure that the price remains competitive over the life of the contract. The price will be adjusted based on changes in the index. Ocean State will pay a two-part demand/commodity rate. The purchase price contract does not impose a take-or-pay obligation on Ocean State; thus, Ocean State will not be required to pay commodity charges for gas not taken.

After the tenth contract year, Ocean State or ProGas may request renegotiation of all the pricing terms of the contract, including both the demand and commodity charge. If either Ocean State or ProGas is unable to agree upon such pricing terms, either party has the right to refer the matter to arbitration.

In addition, Ocean State, Ocean State II, ProGas, and TransCanada have entered into a precedent agreement in the form of a backstopping agreement,<sup>5/</sup> pursuant to which ProGas and TransCanada will each backstop the gas supply obligations of the other to Ocean State and Ocean State II on a best-efforts basis.

Based on this application, the only significant change in the import arrangement previously authorized by Order 243-A applicable to Ocean State, is the proposed reduction of its authorized import from up to 100,000 Mcf per day to up to 50,000 Mcf per day and the backstop agreement.

A notice of the joint application was issued on June 9, 1989, inviting protests, motions to intervene, notice of intervention, and comments to be filed by July 26, 1989.<sup>6/</sup> A motion to intervene without comment was filed by ProGas, which urged FE to act expeditiously to authorized the requested import. This order grants intervention to this movant.

## II. Decision

In Order 243, the ERA found that that import arrangement conforms to the DOE policy guidelines. This new import arrangement will also be competitive because the purchase contract contains the same automatic price adjustment mechanisms, price renegotiation provisions, and no take-or-pay requirements. Since Ocean State would incur no take-or-pay or minimum bill obligation in connection with this import, it is reasonable to assume that Ocean State would not take gas from either supplier if it is not the most competitively priced supply available. The DOE therefore finds this new arrangement to be competitive. Under the policy guidelines, need is presumed to be a function of competitiveness. Based on the marketability of gas under this arrangement, together with the uncontested nature of the proceeding, the DOE determines that there is a need for the proposed import. With respect to security of supply, the DOE finds that the 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 20-year term of the import proposal. Further, the backstop arrangement enhances the ability of security of supply to the cogeneration facility. Therefore, the DOE finds that the proposed import would be from a secure source of supply.

In sum, after review of the entire record of this proceeding, we conclude that there is no information that would require us to alter our position in Order 243-A that the proposed import meets the public interest

requirements of section 3 of the NGA.

After taking into consideration all of the information in the record of this proceeding, I find that granting the request in the joint application of Ocean State and Ocean State II to amend Order 243-A by reducing Ocean State's import authority from 100,000 Mcf per day to up to 50,000 Mcf per day of natural gas from Canada over a 20-year period 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. Ordering Paragraph A of DOE/ERA Opinion and Order 243-A is hereby amended by substituting the following: Ocean State Power (Ocean State) is authorized to import up to 50,000 Mcf per day of Canadian natural gas from ProGas Limited (ProGas) for a 20-year period plus 180 days, beginning on the date of first delivery, in accordance with the provisions set forth in the gas purchase contract between Ocean State and ProGas dated December 14, 1988, as submitted with the joint application.

B. If ProGas is unable to fulfill its contractual obligations in whole or in part to Unit 1, Ocean State is authorized to import up to 50,000 Mcf per day of Canadian natural gas from TransCanada PipeLines Limited (TransCanada) in accordance with provisions of the backstopping agreement dated August 31, 1988, submitted with the joint application. In no case is Ocean State authorized to import more than 50,000 Mcf of Canadian gas per day.

C. Within two weeks after deliveries begin, Ocean State shall notify the Office of Fuels 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 first delivery of natural gas authorized in Ordering Paragraphs A and B above occurred.

D. With respect to the volumes authorized by Ordering Paragraphs A and B, Ocean State shall file with the Office of Fuels Programs, Fossil Energy, within 30 days following each calendar quarter, quarterly reports showing, by month, the quantities of natural gas in MMcf imported under this authorization, the name of the supplier, and the average price per MMBtu paid for those volumes at the international border. The price shall include a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis.

E. The motion to intervene, as set forth in this Opinion and Order, is hereby granted, provided that participation of the intervenor shall be limited to matters specifically set forth in its motion to intervene and not herein

specifically denied, and that admission of such intervenor shall not be construed as recognition that they might be aggrieved because of any other issues 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 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/ On December 31, 1986, Ocean State also filed an exemption petition with the ERA's Office of Fuels Programs pursuant to the Powerplant and Industrial Fuel Use Act of 1978 (P.L. 95-620) to exempt the powerplant from the statutory requirement that it be capable of using coal or another alternate fuel as a primary energy source instead of natural gas or oil. (Docket No. ERA-C&E-87-22).

3/ 1 ERA Para. 70,778.

4/ 1 ERA Para. 70,810.

5/ Form of Backstopping Agreement Appended To Precedent Agreement Between Ocean State Power, Ocean State Power II, ProGas Limited and TransCanada Pipelines Limited Dated August 31, 1988.

6/ 54 FR 26832, June 26, 1989.