

Cited as "1 FE Para. 70,260"

Niagara Mohawk Power Corporation (FE Docket No. 89-33-NG), November 15, 1989.

DOE/FE Opinion and Order No. 351

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

I. Background

On June 6, 1989, Niagara Mohawk Power Corporation (Niagara Mohawk) filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127 for authorization to import from TransCanada PipeLines Limited (TransCanada) up to 51,000 Mcf per day of Canadian natural gas on a firm basis and additional interruptible volumes of up to 105,000 Mcf per day over a term of 15 years beginning November 1, 1990. Niagara Mohawk proposes to construct a 27.4 mile extension of its distribution system between Watertown, New York, and TransCanada's facilities at the international border near Gananoque, Ontario (Trans York Extension), at which point the gas would enter the U.S. Niagara Mohawk has applied to the Federal Energy Regulatory Commission (FERC) for a Presidential Permit (Docket No. CP89-1517-000) in connection with the extension. Niagara Mohawk serves approximately 450,000 customers in the central, northern and eastern regions of the State of New York, and the Watertown, Syracuse, Oswego and Oneida regions of its service area would be supplied directly by this import.

On January 4, 1989, Niagara Mohawk and TransCanada entered into a precedent agreement to execute a gas purchase contract. Under the proposed contract, TransCanada would be obligated to deliver 51,000 Mcf per day on a firm basis, an annual contract quantity equal to the sum of the daily quantities, and a 15-year quantity of 279,225 MMcf. Niagara Mohawk would not be obligated to take or pay for any volume of gas; TransCanada's sole remedy, in the event Niagara Mohawk does not make up in a succeeding year any deficiency below 60 percent of the annual contract quantity, is an option to reduce permanently its future obligation to deliver the daily contract quantity. In addition to the firm volumes, Niagara Mohawk may purchase excess gas to the extent it is available. The Trans York Extension would have adequate capacity to deliver up to 105,000 Mcf per day of excess gas.

Niagara Mohawk will pay for firm volumes of gas in accordance with a two-part, demand/commodity rate structure. Under the proposed contract, the demand charge, separately determined for each month, is calculated by multiplying the sum of the daily contract quantities in effect for the month

by the demand charge rate (DCR). The DCR is the sum of the monthly demand toll per Mcf on TransCanada's system, the demand charge per Mcf billed to TransCanada by NOVA Corporation of Alberta, and a fixed administrative charge of \$1.53 per Mcf.

In general, the proposed contract indexes the commodity charge for firm sales to Niagara Mohawk's other long-term firm gas supplies. The commodity charge is calculated by subtracting the daily amount of the monthly demand charge from the adjusted base price. The adjusted base price is determined each month by multiplying the base price by a fraction, the numerator of which is the current weighted average 100 percent load factor rate under Niagara Mohawk's other long-term firm supply contracts, and the denominator of which is \$3.1516, CNG Transmission Corporation's (CNG) 100 percent load factor rate on September 15, 1988. The base price provided in the agreement is \$2.24 per MMBtu for the first 60 percent of the monthly contract quantity and \$2.19 per MMBtu for the remainder. As of June 1, 1989, had the gas been flowing, the 100 percent load factor price per MMBtu would have been \$2.3749. The parties may also agree on a price that is lower than the contract price. The proposed contract provides for price renegotiation and arbitration if the price differs substantially from the parties' expectations at the time of negotiations. The price for excess gas volumes will be negotiated by Niagara Mohawk and TransCanada.

A notice of the application was issued on August 9, 1989, inviting protests, motions to intervene, notices of intervention, and comments to be filed by September 14, 1989.^{1/} Motions to intervene without comment or request for additional procedures were filed by Tennessee Gas Pipeline Company and CNG. This order grants intervention to these movants.

II. Decision

The application of Niagara Mohawk 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 must be authorized unless there is a finding that it "will not be consistent with the public interest."^{2/} The DOE is guided by its natural gas import policy guidelines,^{3/} under which the competitiveness of an import in the markets served is the primary consideration in meeting the public interest test. The DOE also considers, particularly in long-term arrangements such as this, need for and the security of the imported supply. In addition, the National Environmental Policy Act of 1969 (NEPA)^{4/} requires DOE to consider the environmental effects of natural gas import authorizations.

A. General Considerations

Niagara Mohawk submits that the agreement with TransCanada ensures that

the price will remain competitive with and comparable to the prices of major competing natural gas supply sources in the market served by Niagara Mohawk, and will enhance its ability to meet system requirements. Niagara Mohawk notes that it is now served directly by only one interstate pipeline, CNG, and the proposed import would provide it with an additional source of firm, secure, long-term supplies. In addition, Niagara Mohawk projects that its arrangement with TransCanada will reduce customer gas costs by approximately five percent.

The proposed import and Niagara Mohawk's assertions regarding its competitiveness are uncontested. In addition to the price adjustment provisions, DOE notes that the proposed contract imposes no take or pay requirements and permits the applicant to purchase excess gas and to receive gas at other than the Trans York Extension delivery point. The proposed contract also provides for renegotiation and arbitration. On the basis of the record before the agency at this time, DOE finds that the proposed arrangement is competitive and is sufficiently flexible that it should remain competitive during the term of the contract. This preliminary finding of competitiveness gives rise to a presumption of need. As additional support, Niagara Mohawk asserts that the contract will assist it in meeting system demands by 450,000 customers in its upstate New York gas system service area. This service area covers 15 counties with a population of approximately 1.7 million people. Over the past several years, Niagara Mohawk has filed for and obtained new franchises to expand its service area. Gas sales growth in the Watertown district, the applicant explains, is driven by the expansion of Fort Drum, a U.S. military base construction project, and the associated growth in the area's civilian economy.

On the basis of the record before it at this time, DOE also finds that the supply of gas is and will remain secure. Western Canada possesses total established gas reserves of approximately 100 Tcf. TransCanada has been a leading Canadian exporter for many years and has never curtailed firm deliveries to any of its export customers. TransCanada or its affiliates have some 24,000 sections of land under contract in Alberta covered by 2500 contracts with over 700 producers. These sources have a proven record of stability and reliability.

B. Environmental Determination

Niagara Mohawk's import proposal requires the issuance of several major permits and authorizations before the project can proceed, including FE's import authorization under section 3 of the NGA and FERC's authorization under section 7 of the NGA to construct and operate new facilities to transport the natural gas. The FERC has the lead in preparing the environmental analysis required to assess the impacts of the new facilities related to this import project.

When the appropriate environmental documentation is completed by the FERC, the DOE will independently review the analysis and take the appropriate action to complete the DOE's NEPA responsibilities. The FE will then reconsider this conditional order and issue an appropriate final opinion and order. The approval of this import of natural gas is therefore conditioned on completion of an environmental review and DOE's responsibilities under NEPA.

This conditional order makes preliminary findings and indicates to the parties the FE's determination at this time on all but the environmental issue in this proceeding. 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 Niagara Mohawk conditional authority to import up to 51,000 Mcf per day of Canadian natural gas on a firm basis and additional interruptible volumes of up to 105,000 Mcf per day over a term of 15 years estimated to begin November 1, 1990, in accordance with the proposed contract described above, is not inconsistent with the public interest.

ORDER

For 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, Niagara Mohawk is authorized to import up to 51,000 Mcf per day of Canadian natural gas on a firm basis and up to an additional 105,000 Mcf per day on an interruptible basis during a term beginning November 1, 1990, and ending October 31, 2005, in accordance with the provisions described in its application.

B. The authorizations in Ordering Paragraph A are conditioned upon entry of a final opinion and order after review by the Department of Energy (DOE) of the environmental documentation being prepared by the Federal Energy Regulatory Commission and the completion by the DOE of its National Environmental Policy Act responsibilities.

C. Niagara Mohawk shall notify the Office of Fuels Programs, Fossil Energy, Room DF-056, FE-50, Forrestal Building, 1000 Independence Avenue, S.W. Washington, D.C. 20585, in writing of the date of initial delivery of natural gas imported under Ordering Paragraph A within two weeks after deliveries begin.

D. With respect to the imports authorized by this Opinion and Order, Niagara Mohawk shall file with the Office of Fuels Programs 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/commodity charge breakdown on a monthly and per unit (MMBtu) basis.

E. The motions to intervene, as 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 authorizations granted in Ordering Paragraph A are 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. Niagara Mohawk and intervenors in this proceeding shall be bound by any Opinion and Order issued in subsequent proceedings.

Issued in Washington, D.C., on November 15, 1989.

--Footnotes--

1/ 54 FR 33605, August 15, 1989.

2/ 15 U.S.C. Sec. 717b.

3/ 49 FR 6684, February 22, 1984.

4/ 42 U.S.C. 4321, et seq.