Cited as "1 FE Para. 70,267"

Consolidated Edison Company of New York, Inc. (FE Docket No. 89-24-NG), November 21, 1989.

DOE/FE Opinion and Order No. 352

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

I. Background

On March 30, 1989, Consolidated Edison Company of New York, Inc. (Con Edison), filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order No. 0204-127,1/ requesting authorization to import near Niagara Falls, New York, up to 30,600 Mcf per day of natural gas from Canada over a term of 15 years. Deliveries would begin as soon as all necessary governmental approvals have been received and all required pipeline facilities are in place. Con Edison, a public utility company that delivers natural gas to over one million customers in New York City and Westchester County, proposes to import this gas from Amoco Canada Petroleum Company, Ltd. (Amoco Canada), to supplement its system supply.

The gas purchase contract between Con Edison and Amoco Canada dated September 1, 1988, provides for an initial term ending October 31, 14 years after the first year of the contract, but with an automatic extension for subsequent periods of five years unless cancelled by either party. The first contract year will end on October 31 following the date when deliveries start.

The gas would be purchased under a two-part rate consisting of a monthly demand charge covering tolls for transportation in Canada and a commodity charge based on the average of the specified sales rates (base index) of Con Edison's three principal domestic pipeline suppliers, Transcontinental Gas Pipe Line Corporation (Transco) (Transco CD-3 rate), Texas Eastern Transmission Corporation (Texas Eastern) (Tetco DCQ-D rate), and Tennessee Gas Pipeline Company (Tennessee) (Tennessee CD-5 rate), minus Canadian and domestic transportation charges. The commodity charge would be calculated monthly, but during the summer season (April through October) would be subject to price caps keyed to designated residual fuel oil prices. The price provisions of the contract are subject to renegotiation and arbitration if the parties fail to reach agreement. After 1995, either party may request a redetermination of the commodity charge if the base index component differs by more than a plus or minus five percent from spot gas prices reported for the previous month in Gaswire (published by McGraw-Hill). Absent a mutually agreeable redetermination within 60 days, either party may terminate the purchase contract subject to a pre-termination phase-out period of up to four years during which the parties would have specified rights and obligations.

The gas purchase contract contains no take-or-pay obligation but provides for payment of a gas inventory charge (GIC) to Amoco Canada if Con Edison fails to purchase a certain threshold quantity. This threshold quantity is generally defined as the average of the threshold quantities that Con Edison must take annually to avoid GICs under the domestic pipeline tariffs included in the base index, or 60 percent in the first year and 70 percent thereafter if none of these tariffs have a GIC or GIC-type charge. The GIC payable to Amoco Canada would be based on the average GIC rates of Con Edison's primary suppliers which comprise the base index. Monthly GIC charges would be subject to refund when Con Edison's cumulative purchases over a contract year equal or exceed the arithmetic average of the percentages of Con Edison's minimum daily take that it is required to take annually to avoid the GIC under the tariffs included in the base index.

Amoco Canada would dedicate 170 Bcf of specified reserves exclusively to its performance under the contract. Although Amoco Canada could make deliveries under the contract from any source, it may not dedicate the specified reserves to any other sales transaction. Finally, the contract is subject to termination by either party if construction of the pipeline facilities required to deliver this gas has not commenced by April 3, 1991.

According to Con Edison, the volumes of Canadian gas would enter the U.S. through Tennessee's Niagara Spur facilities at Niagara Falls and would be delivered to an interconnection with National Fuel Gas Supply Corporation's (National Fuel) system at Lewiston, New York. National Fuel would then transport the gas to the facilities of Transco at Leidy, Pennsylvania, for ultimate delivery to Con Edison. Each of the transporters has an application pending before the Federal Energy Regulatory Commission (FERC) proposing to construct and operate the new pipeline facilities that would be required before Con Edison can begin importing this gas. Tennessee's application in FERC Docket No. CP88-171-000 is to construct pipeline and necessary compression facilities to loop its existing Niagara Spur line. National Fuel's application in FERC Docket No. CP88-194-000 is to construct a compressor station and new pipeline facilities between Lewiston and a proposed interconnection with Transco at Leidy. Transco's application in FERC Docket No. CP89-7-000 (superseding Docket No. CP88-177-000) is to construct pipeline looping and compression facilities between Leidy and New York City.

A notice of this application was issued on May 9, 1989, inviting protests, motions to intervene, notices of intervention, and comments to be filed by June 16, 1989.2/ In a letter to FE dated June 16, 1989, the Public Service Commission of the State of New York (PSCNY) stated its support of the application as a means of assuring an adequate supply of natural gas to meet expected loads on Con Edison's system. PSCNY also stated that without increased gas supplies, Con Edison would not be able to add new customers. There were no other filings.

II. Decision

The application filed by Con Edison 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".3/ This determination is guided by the DOE's natural gas import policy guidelines.4/ 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.

A. Competitiveness of the Import

Con Edison's proposed import arrangement is consistent with the DOE's policy guidelines. The DOE guidelines state that the competitiveness of an import arrangement will be assessed by a consideration of the whole fabric of the arrangement. They contemplate that the contract arrangement should be sufficiently flexible to permit pricing and volume adjustments as required by market conditions and availability of competing fuels, including domestic natural gas. Con Edison's import proposal, as set forth in the application, is consistent with the DOE policy guidelines.

Con Edison has freely negotiated a gas purchase agreement to meet the particular requirements of the market it serves. The gas purchase contract contains no take-or-pay obligation but provides for payment of a gas inventory charge if Con Edison fails to purchase a certain threshold quantity. The price of the natural gas imports is indexed to the price of other natural gas supplies. It is capped during summer seasons by the price of alternate fuels in Con Edison's market, which ensures that the price of the gas provided pursuant to the purchase contract will remain competitive. Provisions for renegotiation and arbitration of key contract terms are designed to provide further assurance that the gas will remain marketable for the life of the contract. Thus, DOE finds the arrangement to be competitive.

B. Need

In its application, Con Edison states that need for the proposed imported supply to meet its market requirements in its service area is beyond challenge. The PSCNY supports Con Edison's assertion by stating that its studies of the company's supply requirements lead to the conclusion that without the added gas supplies contemplated in this proceeding, Con Edison could not continue to attach new customers in accordance with its public service obligation, particularly in the winter and peak day periods. Additionally, the PSCNY stated that the addition of the new proposed import to the other pipeline supply sources would greatly improve the company's system reliability. Finally, since, under policy guidelines, need is presumed to be as function of competitiveness and no party contested either the competitiveness of or the need for the imported supply, the DOE finds that there is a need for the proposed import.

C. Security of Supply

Amoco Canada represents that it has dedicated and is willing to dedicate sufficient natural gas reserves to meet its obligations under the purchase contract. The proposed gas to be purchased will be less than six percent of Con Edison's gas requirements. Furthermore, no party has argued that Amoco Canada's reserves are not secure. Therefore, the DOE finds that security of supply has been established and 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 contract period.

D. Environmental Determination

The National Environmental Policy Act of 1969 (NEPA) 5/ requires Federal agencies to give appropriate consideration to the environmental effects of their proposed actions. Con Edison's proposed import of natural gas requires the issuance of several major permits and authorizations before the import can proceed, including the DOE's import authorization under section 3 of the NGA and FERC's authorization under section 7 of the NGA for Tennessee, National Fuel, and Transco to construct and operate 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. The FERC has completed one environmental assessment 6/ and has at least one or perhaps two more environmental documents to complete.

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 DOE 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's findings are preliminary and indicate to the parties the DOE's determination at this time on all but the environmental issues in this proceeding. All parties are advised that the issues and findings addressed herein regarding the import of natural gas will be reexamined at the time of the DOE's review of the FERC's NEPA analysis. The results of that reexamination will be reflected in the final opinion and order.

E. Conclusion

After taking into consideration all the information in the record of this proceeding, I find that granting Con Edison conditional authority to import up to 30,600 Mcf per day of Canadian natural gas per day over a 15-year period beginning on the date of first 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. Consolidated Edison Company of New York, Inc. (Con Edison), is authorized to import up to 30,600 Mcf per day of Canadian natural gas from Amoco Canada Petroleum Company, Ltd. (Amoco Canada), over a 15-year period beginning on the date of first delivery in accordance with the pricing and other provisions established in the proposed gas purchase contract submitted as part of its application.

B. The authorization in Ordering Paragraph A is conditioned upon entry of a final opinion and order by the Department of Energy (DOE) after review by the DOE of the environmental analysis of the transportation facilities related to this import prepared by the Federal Energy Regulatory Commission (FERC) and the completion by the DOE of its National Environmental Policy Act (NEPA) responsibilities.

C. Within two weeks after deliveries begin, Con Edison 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 the first delivery of natural gas authorized in Ordering Paragraph A above occurs.

D. With respect to the imports authorized by this Order, Con Edison 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 Mcf 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.

E. The authorization granted in Ordering Paragraph A is 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. Con Edison shall be bound by any opinion and order issued in such subsequent proceedings.

Issued in Washington, D.C., on November 21, 1989.

--Footnotes--

1/ 54 FR 11436, March 20, 1989.

2/ 54 FR 21276, May 17, 1989.

3/ 15 U.S.C. Sec. 717b.

4/ 49 FR 6684, February 22, 1984.

5/ 42 U.S.C. 4321, et seq.

6/ Natural Fuel Gas Supply Corporation, Penn-York Energy Corporation, PennEast Gas Services Company, CNG Transmission Corporation, Texas Eastern Transmission Corporation, Transcontinental Gas Pipe Line Corporation, Docket Nos. CP88-194-001, CP88-195-002 and CP89-7-002, SS-2 STORAGE SERVICE PROJECT, ENVIRONMENTAL ASSESSMENT dated July 1989, Federal Energy Regulatory Commission.