Cited as "1 FE Para. 70,278"

Wisconsin Power and Light Company (FE Docket No. 89-19-NG), December 18, 1989

DOE/FE Opinion and Order No. 362

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

Background

On March 13, 1989, Wisconsin Power and Light Company (WPL) 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 (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127 for authority to import up to 10,718 Mcf per date of natural gas from TransCanada PipeLines, Limited (TransCanada), beginning on the date of the first delivery through October 31, 1992. In addition, WPL requests separate blanket authority to import up to 100,000 Mcf per day of spot market natural gas from various Canadian producers over a two-year period beginning on the date of the first delivery. WPL intends to use the imported gas to supply customers on its system. It is contemplated that the gas supplied under the blanket authorization would be imported by WPL either for its own account, or as agent on behalf of others. WPL states that no new facilities would be required for the transportation of these proposed imports.

WPL furnished with its application a precedent agreement and gas purchase contract with TransCanada dated October 26, 1988. Under the terms of the contract, TransCanada will supply WPL up to a maximum of 4,287 Mcf of gas per day on a firm basis for a term extending through October 31, 1992. The contract contains a provision giving WPL the right to purchase up to 6,431 Mcf per day of additional interruptible supplies that may become available and offered by TransCanada from time to time. According to this application, WPL is not obligated to take or pay for any volume of gas. The contract provides that if, during any contract year, the volumes purchased by WPL fall below 60 percent of the aggregate of the maximum daily quantities, then TransCanada may elect in the succeeding year to reduce the daily contract quantity of 4,287 Mcf.

The proposed gas purchase contract between WPL and TransCanada establishes a two-part rate structure consisting of a monthly demand charge and a monthly commodity charge. The demand charge would equal the product of the daily contract quantity in effect during such month times the sum of the toll charges of TransCanada and Nova Corporation of Alberta for transportation of the gas in Canada. The commodity charge to be paid for each MMBtu of firm supplies at 100 percent load factor is calculated based upon a formula that reflects the price of spot market gas delivered into ANR's gas transmission system at Custer County, Oklahoma. Notwithstanding the actual computed price, the contract contains a provision that WPL would have to pay a delivered border price for the gas of at least $1.50 (U.S.) per MMBtu. For each MMBtu of interruptible supplies, the commodity charge paid by WPL will be based upon the same formula in effect for firm volumes less five cents. The agreement also provides that the parties may negotiate modification of the pricing provisions. In an April 14, 1989, letter, WPL indicated that the pricing formula would result in a delivered charge of $1.43 per MMBtu for April 1989. Thus, the price WPL would pay for April 1989 would be adjusted to $1.50 per MMBtu.

The volumes to be supplied under the agreement with TransCanada would enter the U.S. at a point near Emerson, Manitoba, through existing pipeline facilities owned and operated by Midwestern Gas Transmission Company (Midwestern). Midwestern would transport the gas to an interconnection with the facilities of ANR Pipeline Company (ANR) at Marshfield, Wisconsin, which would then use its existing facilities to deliver the gas to WPL's distribution system.

Under the requested blanket authority, the specific terms of each spot market transaction would be negotiated on an individual basis with market-sensitive pricing. No contracts have been executed and therefore the application does not identify the suppliers, buyers, or prices. The spot gas would be transported by means of existing facilities; however, the location of entry points to the U.S. may vary for different transactions with delivery points to be established during sales contract negotiations.

WPL asserted that the proposed import volumes are needed to meet its system requirements and that the pricing formula in the gas purchase agreement with TransCanada will assure a competitive price over the term of the arrangement.

A notice of this application was issued on April 28, 1989, inviting protests, motions to intervene, notices of intervention, and comments to be filed by June 9, 1989.1/ A motion to intervene without substantive comment or request for additional procedures was filed by Western Gas Marketing Limited. This order grants intervention to this movant.

II. Decision

The application filed by WPL has been evaluated to determine if the proposed import arrangement meets the public interest requirements of section 3 of the NGA. Under section 3 of the NGA, an application to import natural gas must be approved unless there is a finding that it "will not be consistent with the public interest." 2/ FE is guided in making its determination by the DOE's natural gas import policy guidelines.3/ Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test. Need for the import and security of the supply are also considerations in long-term arrangements such as this.

WPL's uncontested import proposal as set forth in the application is consistent with section 3 of the NGA and the DOE policy guidelines. The guidelines direct DOE to look for, as indicia of competitiveness, flexible contract arrangements which permit the parties to negotiate the terms of the imported gas supply in response to market conditions over the term of the contract. This contract provides such flexibility.

WPL has negotiated competitive price terms with TransCanada. WPL and those entities for which WPL will act as broker or agent will negotiate price terms with other Canadian producers that will approximate the delivered cost of spot gas purchases. Under such price terms, the gas will reflect the competitive market price over the life of the import authority. The volumes requested by WPL are competitively priced and will not be subject to take-or-pay provisions; they will either be utilized by WPL's resale customers or by those for whom WPL is acting as broker or agent on the basis that such gas is competitively priced.

After taking into consideration all of the information in the record of this proceeding, I find that granting WPL authority to import up to 10,718 Mcf of natural gas per day from TransCanada beginning on the date of first delivery through October 31, 1992, and blanket authorization for a two-year period to import from Canada up to 100,000 Mcf of natural gas per day on an interruptible basis 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. Wisconsin Power and Light Company (WPL) is granted authorization for a period commencing on the date of first delivery and continuing through October 31, 1992, to import, at Emerson, Manitoba, up to 10,718 Mcf per day of natural gas from TransCanada Pipelines, Limited.

B. WPL is further granted blanket authorization beginning on the date of first delivery to import from Canada up to 100,000 Mcf of natural gas per day on a short-term, spot market basis for a two-year period. This natural gas may be imported at any point on the international border where existing pipeline facilities are located.

C. Within two weeks after deliveries begin, WPL 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 and B above occurred.

D. With respect to the imports authorized in Ordering Paragraph A, WPL 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.

E. With respect to the imports authorized in Ordering Paragraph B, WPL shall file with the Office of Fuels Programs within 30 days following each calendar quarter, quarterly reports indicating whether imports of natural gas have been made, and if so, giving, by month, the total volume of the imports in MMcf and the average purchase price per MMBtu at the international border. The reports shall also provide the details of each import transaction, including the name of the purchaser, estimated or actual duration of the agreement(s), transporter(s), point of entry, and, if applicable, the per unit (MMBtu) demand/commodity charge breakdown of the price, any special contract adjustment clauses, and any take-or-pay provisions.

F. 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 this intervenor shall not be construed as recognition that it might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., on December 18, 1989.

--Footnotes--

1/ 54 FR 20186, May 10, 1989.

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

3/ 49 FR 6684, February 22, 1984.