

Cited as "1 FE Para. 70,293"

Southeastern Michigan Gas Company (ERA Docket No. 88-52-NG), January 31, 1990

DOE/FE Opinion and Order No. 375

Order Granting Long-Term Authorization To Import Natural Gas From Canada and Granting Interventions

I. Background

On August 31, 1989, Southeastern Michigan Gas Company (Southeastern) filed an amended application with the Office of Fossil Energy (FE) of the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA), for authorization to import from Canada up to 15,000 Mcf of natural gas per day on a firm basis, and excess volumes, up to an additional 40,000 Mcf per day,^{1/} on an interruptible basis, for a 15-year term beginning when gas is first delivered to Southeastern. The applicant, a local distribution company subject to regulation by the Michigan Public Service Commission, seeks authorization to import gas that it will buy from Western Gas Marketing, Ltd. (WGM), a wholly-owned subsidiary of the TransCanada PipeLines, Ltd. (TransCanada).

Southeastern had requested that the DOE hold its original August 1988 application ^{2/} in abeyance pending governmental approval under the Alberta Natural Gas Marketing Act. WGM had been unable to secure the requisite producer support for the sale of the gas. Southeastern indicates in its amended application that the pricing and other terms of the import arrangement, as modified, have received the necessary producer support, and requests that DOE reactivate the application and consider it as amended.

TransCanada would deliver the gas to a point at the international border near Emerson, Manitoba, where TransCanada's facilities connect with those of Great Lakes Gas Transmission Company (Great Lakes) and Midwestern Gas Transmission Company. Great Lakes has filed a related application with the Federal Energy Regulatory Commission (FERC Docket No. CP88-541-000) for authority to transport the gas to Southeastern via an existing interconnection between Southeastern and ANR Pipeline Company (ANR). As part of its FERC application, Great Lakes requests authority to construct certain necessary facilities, including a 2.9-mile loop of 36-inch diameter pipe. Southeastern indicates ANR may also be involved in transporting some of the gas to an existing interconnection of their two systems.

The proposed gas purchase contract renegotiated by Southeastern and WGM provides for the sale and purchase of a daily contract quantity of 15,000 Mcf, up to a term total of 82,125 MMcf, with deliveries to commence after regulatory approval and to continue for a term ending 15 years after gas first flows. The proposal also provides for Southeastern's purchase of gas in excess of the daily contract quantity on an interruptible, best-efforts basis, subject to available transportation. The annual contract quantity (sum of the daily contract quantity) is subject to a 50 percent minimum purchase requirement ("annual triggering volume") in the first three contract years and 70 percent thereafter. If Southeastern does not take the annual triggering volume in any year, the contract provides for a gas inventory charge of 10 cents per Mcf of the shortfall. The contract also permits WGM to reduce the daily contract volume to reflect a shortfall.

Southeastern would purchase gas under the proposed contract in accordance with a two-part, demand-commodity rate structure. The demand charge would be determined monthly based on the firm transportation charges of TransCanada and The NOVA Corporation of Alberta (NOVA). The method for calculating the NOVA component of the demand charge rate is subject to limited renegotiation.

The commodity component, as modified, is based on a formula indexed to the price paid by Southeastern under current long-term contracts for the purchase and sale of gas on a firm basis from alternative suppliers delivered through the pipeline systems of ANR or Panhandle Eastern Pipeline Company. The commodity charge is subject to annual renegotiation at the request of either party, and in the absence of agreement, arbitration. In an October 10, 1989, letter, Southeastern indicated that under the pricing formula the delivered charge for September 1989 would be \$1.63 per MMBtu. This price is the total of a \$0.2575 demand charge and a \$1.3725 commodity charge. The price for excess gas would be the effective commodity charge under the gas purchase contract, plus the interruptible transportation charges of TransCanada.

Gas supplies committed to the import arrangement under the proposed contract would come from the pool of supplies dedicated by Canadian producers to TransCanada. WGM and TransCanada must use reasonable efforts to add gas reserves necessary to maintain a ten-year reserve-production ratio and, according to the application, may not enter into gas contracts in any year in which that ratio is less than ten, or which would reduce the ratio to less than ten.

In support of its application, Southeastern asserts that this import arrangement is in the public interest because it is competitive and its gas

source will be secure.

II. Intervention and Comments

DOE issued notices of this application on October 12, 1988, and its amendment on October 12, 1989, inviting protests, motions to intervene, notices of intervention, and comments to be filed by November 14, 1988, and November 16, 1989, respectively.^{3/} Motions to intervene in support of Southeastern's application were filed by Michigan Consolidated Gas Company and Western Gas Marketing Limited.

III. Decision

Under section 3 of the Natural Gas Act, an application to import natural gas must be approved unless, after opportunity for hearing, it is found that the import "will not be consistent with the public interest." ^{4/} DOE is guided in making its determination by the DOE's natural gas import policy guidelines.^{5/} Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test. In the case of long-term arrangements such as this, need for the gas supply and security of supply are also important considerations.

DOE has determined that Southeastern's uncontested long-term proposal to import Canadian natural gas on a firm basis is consistent with the DOE policy guidelines. The guidelines direct DOE to look for, as indicia of competitiveness, flexible, arms-length, contract arrangements, that permit the parties to implement the import under terms that are responsive to market conditions over the term of the contract. This contract provides such flexibility. The minimum purchase requirement applicable to firm supplies is not unreasonable. Moreover, the price of the gas is indexed to alternative, competing gas supplies, and is subject to renegotiation and arbitration.

The competitiveness of the proposed import gives rise to a presumption of need. In addition, Southeastern emphasizes that it needs this gas for its system supply. This assertion is uncontested. Southeastern states that it will depend on these imports to help serve its base load, including residential and small commercial customers. Southeastern indicates that it has attempted to diversify its supply source as gas markets have become more competitive in order to ensure reliable supplies at marketable prices. This arrangement provides Southeastern with access to new long-term supply sources under competitive terms that will ensure the continued marketability of the gas to Southeastern and its customers.

The gas supplies provided by WGM will come from the pool of supplies dedicated by Canadian producers to TransCanada. In light of TransCanada's historical and uncontested reliability as a supplier, and TransCanada's and WGM's commitment to use reasonable best efforts to add new gas reserves to the system as required, the DOE finds that security of supply has been established.

IV. Environmental Determination

DOE guidelines for NEPA compliance^{6/} provide for three possible levels of environmental analysis, depending on the potential for environmental impact. In cases where there is clearly a potential for significant impact, an environmental impact statement (EIS) is prepared. In uncertain cases, an environmental assessment (EA) is prepared to determine if an EIS is needed. If it is determined that an EIS is not required, a Finding of No Significant Impact (FONSI) is prepared. In situations where clearly no significant impacts will occur which could necessitate the preparation of an EIS, a memorandum to the file is prepared to document this fact. In this case, an EA was prepared by the FERC,^{7/} and after independently reviewing the analysis contained therein, the DOE has concluded that the proposed import of natural gas and the related construction and operation of a 2.9-mile loop of 36-inch diameter pipe does not constitute a major Federal action significantly affecting the quality of the human environment. The DOE has prepared a FONSI to that effect, and it has been made part of the record in this docket.

V. Conclusion

After taking into consideration all of the information in the record of this proceeding, I find that granting Southeastern authorization to import from Canada up to 15,000 Mcf of natural gas per day on a firm basis, and up to an additional 40,000 Mcf per day on an interruptible basis, for a 15-year term beginning when gas is first delivered to Southeastern, 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. Southeastern Michigan Gas Company (Southeastern) is authorized to import from Canada up to 15,000 Mcf of natural gas per day on a firm basis, and up to an additional 40,000 Mcf per day on an interruptible basis, for a 15-year term beginning on date of first delivery in accordance with the arrangement proposed in the application in this proceeding as discussed in

this Opinion and Order.

B. 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, Southeastern 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 occurred.

D. The motions to intervene, as set 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.

E. With respect to the imports authorized by this Opinion and Order, Southeastern 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 these volumes at the international border. The price information shall include a demand-commodity charge breakdown on a monthly and per unit (MMBtu) basis.

Issued in Washington, D.C., on January 31, 1990.

--Footnotes--

1/ Although Southeastern's amended contract eliminated a ceiling on volumes of excess gas which could be purchased under the arrangement, the applicant is requesting authority to import excess volumes up to a 40,000 Mcf ceiling. The ceiling reflects the physical limitations of current pipeline capacity.

2/ 53 FR 39760, October 12, 1988.

3/ 53 FR 39760, October 12, 1988, and 54 FR 42561, October 17, 1989.

4/ 15 U.S.C. Sec. 717b.

5/ 49 FR 6684, February 22, 1984.

6/ Department of Energy Guidelines for Compliance with the National Environmental Policy Act, (45 FR 20694, March 28, 1980; as amended at 47 FR 7976, February 23, 1982; 48 FR 685, January 6, 1983; and 50 FR 7629, February 25, 1985; and 52 FR 47662, December 15, 1987).

7/ Environmental Assessment, Great Lakes Gas Transmission Company, FERC Docket No. CP88-541-000, April 22, 1989.