Cited as "1 FE Para. 70,296"

First Energy Associates, a Limited Partnership (FE Docket No. 89-31-NG), February 5, 1990.

DOE/FE Opinion and Order No. 378

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

I. Background

On May 19, 1989, First Energy Associates, A Limited Partnership (FEA), 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 Nos. 0204-111 and 0204-127,1/ requesting authorization to import up to 13,000 Mcf per day and a total of 71,227,000 Mcf of natural gas from Canada over a term of 15 years.

The gas would be purchased from Western Gas Marketing Limited, an Alberta corporation (WGML), to fuel FEA's new combined cycle cogeneration facility to be built in Orange, Connecticut. Commercial operation of the facility is expected to begin in 1991. Under FEA's proposed gas purchase agreement with WGML, delivery of the gas would begin on the first day of the test phase of the cogeneration facility which also would initiate the term of the requested import authorization.

The gas will enter the United States at the international border near Waddington, New York, where the pipeline facilities of TransCanada PipeLines Limited (TCPL) and the proposed Iroquois Gas Transmission System (Iroquois) interconnect, and then would be transported through Iroquois to FEA. Iroquois has an application pending before the Federal Energy Regulatory Commission (FERC) to construct its new pipeline and provide transportation for the imported volumes.

FEA is a New Hampshire partnership consisting of Merrimack Valley Power Generation Corporation, as general partner, and various individuals as limited partners. The proposed cogeneration facility was certified by the Federal Energy Regulatory Commission (FERC) in FERC Docket No. QF87-412-000 as a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978 (PURPA). On June 8, 1989, FEA filed with the DOE a Certification of Compliance with the coal capability requirement for proposed new electric powerplants pursuant to the Powerplant and Industrial Fuel Use Act of 1978, as amended.

The electricity produced by the cogeneration facility would be sold to Consolidated Edison Company of New York, Inc. (Con Edison). Thermal energy recovered from the facility would be used by Miles Pharmaceuticals Division of Miles Laboratories, Inc.

In accordance with a precedent agreement dated May 1, 1989, FEA and WGML, the marketing subsidiary of TCPL, will execute a gas purchase agreement when all governmental authorizations have been obtained and all conditions relating to the completion of the required new facilities have been met. Under the provisions of the draft gas purchase agreement furnished with its application, FEA would pay WGML a two-part border price comprised of a demand charge and a commodity charge. The base price of the gas would be indexed to the fuel adjustment provision of Con Edison's SC-21 tariff for buy-back service and Con Edison's Industrial Gas Tariff, both as approved by the New York Public Service Commission (NYPSC). FEA states that the initial border price at 100 percent load factor (initial base price) would be $2.75 per Mcf based on the Con Edison indices for the month of March 1989. The total cost to gas delivered to FEA's cogeneration facility would include charges incurred for pipeline transmission from the international border.

The monthly demand charge under the proposed contract between FEA and WGML would be the product of the average of the daily contract quantities on each day of the relevant month (excluding quantities delivered to the new cogeneration facility during its test phase) and the monthly demand rate. The monthly demand rate would be the sum of (a) the monthly demand toll per Mcf for the firm transportation of gas on TCPL's system from the Alberta-Saskatchewan border to the point of delivery on the international border; (b) the average monthly demand toll equivalent per Mcf as billed by NOVA to WGML for transportation of the gas to the Alberta border during the previous year; and (c) a current supply reservation fee of $4.563 per Mcf per month which is the equivalent of the average monthly demand toll per MMBtu as billed by WGML in the preceding contract year.

The commodity charge would be equal to the adjusted base price (ABP) less the product of the monthly demand charge rate per Mcf calculated as described above and converted to a charge per MMBtu based on an averaged monthly heating value of the gas transported to the point of delivery, and 12, divided by 365. The ABP for each delivery month would be adjusted in accordance with a formula stated as ABP = 2.75 x AFC. AFC (adjusted fuel cost) for any month is calculated by the following formula:

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AFC = CEAFC   x  0.5   +   CEGC    x   0.5
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CEAFC1 CEGCI1

Where: CEAFC (Con Edison Average Fuel Cost) is equal to the sum of the values included under the headings "Base Cost of Fuel per Kilowatt Hour" and the "Rate Adjustment per Kilowatt Hour For All Bills Rendered Monthly" published during the month preceding the delivery month in the Statement of Fuel Adjustment filed for Con Edison with the New York State Public Service Commission under the heading "Applicable to All Service Classifications Except for 25-Cycle Service"; and CEAFC1 is equal to 2.8328 cents per kilowatt hour: and CEGC (Con Edison Gas Cost) is equal to Con Edison's Retail Natural Gas Price during the month preceding the delivery month of Commercial and Industrial Firm Gas service of 100,000 Mcf per month as set forth in the Monthly Energy Price Report published by the New York State Energy Office; and CEGC1 is equal to $5.5400 per Mcf.

Either FEA or WGML may require renegotiation of the pricing terms of the contract during the contract years commencing November 1, 1993, November 1, 1998, and November 1, 2003. In the event there is no agreement on such pricing terms, either party has the right to refer the matter to arbitration.

If FEA's gas purchases from WGML fall below 75 percent of the aggregate of the maximum daily quantities in a contract year (13,000 x 365 days), FEA must pay a deficiency charge levied on the volumes not taken below the minimum quantity, equal to the average of the commodity charges in effect during the year. In addition, the amount which WGML is obligated to supply is subject to reduction if FEA takes less than minimum contract volumes.

A notice of this application was issued on June 29, 1989, inviting protests, motions to intervene, notices of intervention, and comments to be filed by August 7, 1989.2/ A motion to intervene in support of FEA's application was filed by WGML. This order grants intervention to this movant.

II. Decision

The application filed by FEA 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

FEA'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. FEA's proposed import, as set forth in the application, is consistent with the DOE policy guidelines.

FEA's purchase contract was negotiated at arms-length and designed to meet the discrete needs of FEA's market. The base price of the gas would be indexed to the fuel adjustment provision of Con Edison's SC-21 tariff for buy-back service and Con Edison's Industrial Gas Tariff as approved by the NYPSC. The base price will be adjusted monthly based on changes in the indices.

The monthly demand charge under the proposed contract between FEA and WGML would be the product of the average of the daily contract quantities on each day of the relevant month and the monthly demand rate. The commodity charge would be equal to the ABP less the product of the monthly demand charge rate per Mcf and converted to a charge per MMBtu based on an averaged monthly heating value of the gas transported to the point of delivery, and 12, divided by 365.

FEA would not have to pay a deficiency charge unless its purchases from WGML fall below 75 percent of the aggregate of the maximum daily quantities in a contract year.

FEA also maintains in its application that under no circumstances will it be required to pay commodity charges for gas not taken. In addition, the proposed agreement contains provisions for renegotiation and arbitration of key contract terms, including price, that provide further assurance that the gas will remain marketable for the duration of the purchase contract. Thus, on the basis of the record before it at this time, DOE makes a preliminary finding that the arrangement is competitive.

B. Need

The proposed volumes of natural gas to be imported by FEA would be used to fuel its proposed combined cycle electric generating plant to be constructed in Orange, Connecticut. Moreover, under the policy guidelines, a finding of competitiveness gives rise to a presumption of need and neither, it is emphasized, has been contested in this proceeding. Therefore, the DOE preliminarily finds that there is a need for the proposed import.

C. Security of Supply

FEA notes in its application that WGML has under contract sufficient quantities of natural gas to meet its existing commitments for export, including the volumes to be purchased and imported by FEA. WGML in its motion to intervene in support of FEA's application states that the supply of gas proposed to be imported is extremely secure. WGML further notes that its entire reserve supply base is dedicated to all of its commitments. Furthermore, no party has argued that WGML's reserves are not secure. According to FEA, current estimates place Alberta reserves from conventional producing areas at 65.3 Tcf and potential marketable reserves at 150 Tcf. FEA notes that at full deliveries under its proposed purchase contract with WGML the total quantity would be 0.07 Tcf. Therefore, the DOE preliminarily 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. FEA'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 of Iroquois 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.

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 FEA conditional authority to import up to 13,000 Mcf per day and a total of 71,227 MMcf of Canadian natural gas 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. First Energy Associates, A Limited Partnership (FEA), is authorized to import up to 13,000 Mcf per day and a total of 71,227 MMcf of Canadian natural gas from Western Gas Marketing Limited (WGML), over a 15-year period beginning on the date of first delivery in accordance with the pricing and other provisions in the proposed gas purchase contract, as described in, and 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, FEA 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, FEA 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. 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. FEA shall be bound by any opinion and order issued in such subsequent proceedings.

F. The motion to intervene, as set forth in this Opinion and Order, is hereby granted, provided that participation of such intervenor shall be limited to matters specifically set forth in its motion to intervene and not herein specifically denied, and that the admission of such intervenor shall not be construed as recognition that it might be aggrieved because of any order issued in these proceeding.

Issued in Washington, D.C. on February 5, 1990.

--Footnotes--

1/ 54 FR 11436, March 20, 1989.

2/ 54 FR 28709, July 7, 1989.

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

4/ 49 FR 6684, February 22, 1984.

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