Cited as "1 FE Para. 70,309"

Kamine/Besicorp Carthage L.P. (FE Docket No. 89-48-NG), March 28, 1990.

DOE/FE Opinion and Order No. 389

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

I. Background

On July 21, 1989, Kamine/Besicorp Carthage L.P. (Kamine/Besicorp) 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 authorization to import up to 14,200 Mcf of natural gas per day, and a total of 104 Bcf of natural gas from Canada over a 20-year term. The gas would be used to fuel Kamine/Besicorp's new 49.9 megawatt (MW) cogeneration plant to be constructed and operated in Carthage, New York. Kamine/Besicorp requests that the authorization commence upon the commercial operation of the facility or May 1, 1991, whichever is earlier. The gas would be transported within the U.S. through existing pipeline facilities.

Kamine/Besicorp is a Delaware limited partnership whose general partners are Kamine South Glens Falls Cogen Co., Inc. (Kamine), and Beta South Glens Falls Inc. (Beta). Kamine is an affiliate of Kamine Engineering and Mechanical Contracting Co., Inc. (KEMCO), a New Jersey corporation with its principal place of business in East Union, New Jersey. Beta is a wholly-owned subsidiary of Besicorp Group, Inc. (Besicorp), a New York corporation with its principal place of business in Kingston, New York. KEMCO and Besicorp, individually and jointly, are energy project developers and have been owners and operators of natural gas cogeneration facilities since 1985. KEMCO and/or Besicorp (as affiliates) currently operate four cogeneration facilities in New York and New Jersey and have several other cogeneration facilities in various stages of planning or construction.

According to Kamine/Besicorp, the new cogeneration facility is expected to be completed and in commercial operation by May 1, 1991. If the facility is not operational until after May 1, 1991, the gas subject to the gas purchase agreement will be sold in Canadian markets until facility operations begin. The gas will be used to fuel a new combined-cycle cogeneration facility to be owned by Kamine/Besicorp and constructed on premises leased from James River II Corporation (JRII), an affiliate of James River Corporation of Virginia, at the James River paper mill near Carthage, Saratoga County, New York. The plant has been certified as a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978 (PURPA). The steam will be sold to the James River paper mill and the electricity will be sold to Niagara Mohawk Power Corporation (Niagara Mohawk).

Kamine/Besicorp will purchase the gas from Renaissance Energy Ltd., (Renaissance), pursuant to a natural gas purchase agreement executed May 9, 1989, and enclosed as an exhibit with the application. The agreement states that the applicant will pay Renaissance for gas a minimum base price of $1.45 per MMBtu U.S. This base price is adjusted each quarter to reflect the percentage change in value of an index comprised of: (1) a 50 percent weighting reflecting the 100 percent load factor rate published by Consolidated Natural Gas, (2) a 25 percent weighting reflecting the price of No. 2 fuel, and (3) a 25 percent weighting reflecting the average price of spot gas delivered to five major pipelines, compared to the value of the index on December 1, 1988. The adjusted base price includes commodity costs, royalties, fuel, shrinkage, transportation charges, and costs of permits. This base price will be adjusted annually to reflect the percentage increase in the average electric unit price paid by Niagara Mohawk for electricity generated by the cogeneration facility, subject to a maximum of $2.40 per MMBtu in the first contract year. The base price and the composition of the index will be renegotiated in the month preceding the date of first delivery and prior to the expiration of the fifth and tenth contract years. If Kamine/Besicorp and Renaissance cannot agree on a base price or composition of the index, either party may terminate the agreement upon proper notice.

Kamine/Besicorp supplemented its application with a November 6, 1989, filing that details the transportation arrangements made for the proposed import using existing facilities, lists the approximate costs of the transportation components, and includes copies of the TransCanada PipeLines Limited (TCPL) transportation agreement and tariffs. Renaissance will deliver the natural gas through the pipeline facilities of the NOVA Corporation. Kamine/Besicorp will take title to the gas in Canada and transport the gas through the facilities of TCPL to an existing interconnection with Great Lakes Gas Transmission (Great Lakes). Great Lakes will transport the gas to ANR Pipeline Company (ANR). ANR will transport the gas to the existing interconnection with Texas Gas Pipeline Co. (Texas Gas) which will transport it to CNG Transmission Corporation (CNG). CNG will transport the gas to the Niagara Mohawk distribution system which will transport the gas to the cogeneration facility. The approximate costs of the U.S. transportation components total $1.60 per Mcf. According to Kamine/Besicorp, transportation is on an interruptible basis through the systems of Great Lakes, ANR, Texas

Gas, and CNG.

Kamine/Besicorp states that all the natural gas imported under its requested authorization will be used to fuel the new cogeneration facility. Under anticipated normal operating conditions, the cogenerating facility will consume an average of about 14,200 Mcf per day. Kamine/Besicorp asserts that its request for authority to import up to 104 Bcf per year is necessary to meet the facility's fuel needs, allow for transportation shrinkage, and provide a reasonable margin for any unforeseen exigency.

In support of its application, Kamine/Besicorp states that the imported gas will provide a reliable, long-term, secure supply of competitively priced gas as fuel for the new cogeneration facility. Kamine/Besicorp asserts that the agreement's price provisions provide for market-responsive pricing subject to quarterly adjustments with a range of minimum and maximum prices subject to annual adjustments. Moreover, Kamine/Besicorp states, it is not subject to a take-or-pay obligation; instead, the agreement provides for mutual quantity reduction options in the event of specified degrees of reduced performance by either party. At the same time, Kamine/Besicorp avers, its electric purchase contract requires Niagara Mohawk to purchase all generated electric power, with no curtailment or interruption provisions except for specific operational reasons. Similarly, Kamine/Besicorp states, JRII has contracted to purchase all of its net steam requirement from the new cogeneration facility. With regard to security of supply, the agreement provides for the dedication of specific reserves from a portion of Renaissance's reserve base of 20 gas fields. For these reasons, Kamine/Besicorp maintains that the proposed import is consistent with the public interest.

Kamine/Besicorp filed a Certification of Compliance 1/ with the coal capability requirement for proposed new electric powerplants pursuant to the Powerplant and Industrial Fuel Use Act of 1978 (FUA) 2/ on August 25, 1989.

II. Interventions and Comments

A notice of this application was issued on November 21, 1989, inviting protests, motions to intervene, notices of intervention, and comments to be filed by December 28, 1989. 3/ A motion to intervene and protest that makes a number of comments and requests a hearing if the application is not dismissed was filed by CNG. A motion to intervene in support of Kamine/Besicorp's application was filed by Niagara Mohawk. On January 12, 1990, Kamine/Besicorp filed an answer to CNG's filing. On January 23, 1990, Empire State Pipeline (Empire) filed a motion to intervene out of time in support of the proposed import. On February 6, 1990, CNG filed an amendment to its protest that withdraws in part and amends in part its initial filing. With regard to Empire's late intervention, since no delay to the proceeding nor prejudice to any party will result, the late filing is accepted. This order grants intervention to all movants.

III. Decision

The application and supplement filed by Kamine/Besicorp has been evaluated to determine if the proposed import arrangement meets the public interest requirements of section 3 of the NGA. Under section 3, imports must be authorized unless there is a finding that they "will not be consistent with the public interest." 4/ This determination is guided 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.

A. Competitiveness of the Import

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 arrangements should be sufficiently flexible to permit pricing and volume adjustments as required by market conditions and availability of competing fuels, including domestic natural gas. Kamine/Besicorp's import proposal, as set forth in its application and November 6, 1989, supplemental filing, is consistent with the DOE policy guidelines.

Kamine/Besicorp has freely negotiated a gas purchase agreement with terms that provide flexibility to the import arrangement and help ensure that it will be market responsive. Specifically, the contract contains no take-or-pay requirements, but does include a market-response price that can be adjusted quarterly within the range of a minimum and maximum pricing structure that will be adjusted annually to reflect the price of competing fossil fuels and the average electric unit price paid by Niagara Mohawk for electricity generated by the cogeneration facility. It also contains price renegotiation provisions designed to ensure that the imported gas will be competitive in Kamine/Besicorp's market throughout the 20-year term of the import proposal. Further, CNG has not argued that the proposed import is not competitive. Thus, FE finds the arrangement to be competitive.

B. Need

In its amended filing, CNG protests (only if the Chippewa, Ontario, import point is used; CNG does not protest use of the Emerson, Manitoba, import point) that Kamine/Besicorp makes no showing that the gas volumes for which import authority is sought are needed in order for Kamine/Besicorp to operate its proposed facility or to secure financing. CNG raises a specific objection to the need for the import if the Chippewa import point and new pipeline facilities are to be utilized, arguing that it is ready, willing, and able to provide gas services to the Kamine/Besicorp cogeneration facility. CNG does not protest the proposed import with respect to the Emerson import point and existing facilities.

Since the proposed import project, as noticed in the Federal Register, will use the Emerson import point and existing facilities, and its authorization would be so limited, CNG's argument has no application to this import.

FE emphasizes, moreover, that under the policy guidelines, need is presumed to be a function of competitiveness. Kamine/Besicorp, the user of this gas, has negotiated a gas supply that offers the best economic choice, given the available options. FE, as discussed above, finds this arrangement too competitive. The fact that Kamine/Besicorp would incur no take-or-pay or minimum bill obligation in connection with this import ensures that Kamine/Besicorp does not have to take gas from Renaissance if it is not the most competitively priced supply available.

C. Security of Supply

CNG's amended protest argues that Kamine/Besicorp fails to establish a security of supply. The only basis for CNG's argument is that the import would utilize new transportation facilities. Security of supply, as defined in DOE's natural gas import policy guidelines, refers principally to gas reserves committed to the import arrangement for the term of the contract and to the historic reliability of the Canadian supplier. CNG does not address these primary considerations, and, as noted above, the import does not involve the use of new pipeline facilities.

Renaissance has historically been reliable as a supplier of Canadian gas to the U.S. for many years. The reliability of the proposed Canadian supplies is supported by provisions in the gas purchase contract that provide Kamine/Besicorp assurance of accessibility to producible gas from the dedicated reserves of Renaissance. Further, no party has argued that Renaissance's reserves are not secure. Therefore, FE 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.

After taking into consideration all of the information in the record of this proceeding, I find that granting Kamine/Besicorp authority to import, using existing facilities, up to 14,200 Mcf of natural gas per day, and a total of 104 Bcf of natural gas from Canada over a 20-year term commencing upon the commercial operation of the facility or May 1, 1991, whichever is earlier, 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. Kamine/Besicorp Carthage L.P. (Kamine/Besicorp) is authorized to import, using existing facilities, up to 14,200 Mcf of natural gas per day, and a total of 104 Bcf of natural gas from Canada over a 20-year term commencing upon the commercial operation of Kamine/Besicorp's new 49.9 MW cogeneration plant to be constructed and operated in Carthage, New York, or May 1, 1991, whichever is earlier, in accordance with the provisions of its gas purchase agreement with Renaissance Energy Ltd. as described in the application and supplemental filing in this proceeding and discussed in this Opinion and Order.

B. Within two weeks after deliveries begin, Kamine/Besicorp shall notify the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-5O, 1000 Independence Avenue, S.W., Washington, D.C., 20585, in writing of the date that the first import authorized in Ordering Paragraph A above occurs.

C. With respect to the imports authorized by this Order, Kamine/Besicorp shall file with the Office of Fuels Programs, within 30 days following each calendar quarter, quarterly reports showing by month, the total volume of natural gas imports in Mcf and the average purchase price per MMBtu at the international border. The monthly price information shall provide a breakdown of the commodity and Canadian transportation charges.

D. The motions to intervene, as set forth in this Opinion and Order, are hereby granted, provided that participation of the intervenors shall be limited to matters specifically set forth in their motions to intervene and not herein specifically denied, and that admission of these intervenors shall not be construed as recognition that they might be aggrieved because of any order issued in these proceedings.

E. The requests by CNG Transmission Corporation for dismissal of the Kamine/Besicorp application or a hearing are hereby denied.

Issued in Washington, D.C., March 28, 1990.

--Footnotes--

1/ 54 FR 37709, September 12, 1989.

2/ 42 U.S.C. 8301 et seq., as amended.

3/ 54 FR 48935, November 28, 1989.

4/ S.C. 717b.

5/ 6684, February 22, 1984.