Cited as "1 FE Para. 70,313"

Long Island Cogeneration Limited Partnership (FE Docket No. 89-73-NG), April 23, 1990.

DOE/FE Opinion and Order No. 392

Conditional Order Granting Authorization to Import Natural Gas from Canada and Granting Interventions

I. Background

On October 24, 1989, Long Island Cogeneration Limited Partnership (LI Cogen) 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 15,300 MMBtu (approximately 15,300 Mcf) per day of Canadian natural gas and up to a total of 105 Bcf over a 20-year term via the import point near Niagara Falls, New York. The proposed import would commence upon first delivery, which is expected to be at the start of commercial operation of the proposed cogeneration facility but no later than the earlier of 30 months after construction financing is obtained or December 31, 1992. LI Cogen also requests blanket authority to import up to an additional 2,000 MMBtu of natural gas per day for a total of 1.4 Bcf over a two-year term commencing on the date of first delivery. The gas imported under the proposed long-term arrangement would be purchased from Canadian Occidental Petroleum Limited (CanadianOxy) and used to fuel a proposed 79-megawatt (MW) cogeneration plant. The gas imported under the blanket gas supply arrangement would also be used to fuel the proposed cogeneration facility and would be purchased under individual short-term arrangements arrived at through competitive bidding.

Transportation of the gas imported under both the long-term and the blanket gas supply arrangements would be via expanded pipeline facilities of Transcontinental Gas Pipeline Corporation (Transco) and a proposed 8,400-foot pipeline to be constructed by the Long Island Lighting Company (LILCO). The Transco pipeline expansion would be constructed in Pennsylvania and New Jersey1/ and would consist of two 36-inch-diameter pipeline loops totaling 8.4 miles on Transco's existing pipeline, added compression capacity at some existing compressor stations in these two states, and a new meter station at Sayerville, New Jersey.

The applicant is a limited partnership whose general partner is Long Island Cogeneration, Inc., a New York corporation which, in turn, is an affiliate of Tellus, Inc., a Delaware corporation.

The electricity produced by the proposed 79-MW cogeneration facility would be sold to LILCO to meet its peak and base load demand. The steam produced would be sold to a state institution located within one mile of the proposed cogeneration plant site. The proposed cogeneration facility would be operated as a qualifying facility under the Public Utility Regulatory Policies Act of 1978 (PURPA). Further, on February 21, 1989, FE approved a Certification of Compliance with the coal capability requirement pursuant to the Powerplant and Industrial Fuel Use Act of 1978, as amended.

The gas to fuel the proposed cogeneration facility would be imported by the applicant, LI Cogen, under the terms of a gas purchase and sales agreement with CanadianOxy dated May 1, 1989. Imports of gas would commence on the date of first commercial operation of the proposed cogeneration facility but no later than the earlier of 30 months after LI Cogen obtains construction financing or December 31, 1992. Under the gas purchase and sales agreement, LI Cogen is obligated to take or pay for 3,900,000 MMBtu or approximately 70 percent of the total annual contract quantity for the first contract year and 4,450,000 MMBtu or approximately 80 percent of the total annual contract quantity for each contract year thereafter. However, LI Cogen may make up any quantity of gas paid for but not taken in any contract year over the entire term of the agreement.

Under the terms of the LI Cogen/CanadianOxy gas purchase and sales agreement, CanadianOxy warrants that it can provide all of the gas required by LI Cogen and that if CanadianOxy fails to deliver the volumes nominated by LI Cogen within LI Cogen's maximum daily quantity, LI Cogen may obtain substitute fuel supplies from other suppliers. CanadianOxy would then be obligated to reimburse LI Cogen for any additional costs incurred in obtaining substitute supplies.

The pricing provisions of the LI Cogen/CanadianOxy gas purchase and sales agreement provide that LI Cogen would pay CanadianOxy a border price of $2.50 (U.S.) per MMBtu, as adjusted monthly upward or downward using an index designed to track conditions in the local market. According to the applicant, the index uses a base period of the last calendar quarter of 1988 and the first quarter of 1989, and reflects an aggregated index consisting of equal weights for New York prices of heavy fuel oil and natural gas. Specifically, the numerator of the index would consist of the actual price for each month of No. 6 fuel oil traded in New York Harbor and the city gate price for natural gas in certain New York markets. The denominator would consist of the average price for No. 6 fuel oil traded in New York Harbor and the average price of natural gas in certain New York markets during the base period. After the first ten years of the LI Cogen/CanadianOxy contract, the calculation of the price of the imported gas would be subject to a ceiling equal to the prevailing city gate gas prices of natural gas in the New York area and a floor based on the contract value of the gas and prevailing New York City gate gas prices. The total burner tip price in 1989 dollars would equal $3.26 per MMBtu, which represents the base price of $2.50 per MMBtu to CanadianOxy at the border, plus $.45 to Transco and $.31 to LILCO for domestic transportation.

The applicant asserts that under the long-term gas supply arrangement, the imported gas would be competitive because the price to be paid by LI Cogen would be linked to the price of natural gas and fuel oil prices in the New York City area and because the price of electric power to be supplied by the proposed cogeneration facility to LILCO would reflect LILCO's avoided costs of obtaining electric power from other sources. The applicant also asserts that Long Island is an area in need of additional electric power to meet peak period demand and that the use of clean-burning natural gas rather than coal or oil in fueling the proposed cogeneration plant would minimize any possible adverse environmental impact. The applicant states that the gas imported under the blanket import arrangement would be purchased based on competitive bids, from any number of suppliers, which could include the long-term supplier, CanadianOxy.

A notice of the application was issued January 16, 1990, inviting protests, motions to intervene, notices of intervention, and comments to be filed by February 20, 1990.2/ One motion to intervene was received from LILCO without comment. This order grants intervention to LILCO.

II. Decision

The application of LI Cogen 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/ The DOE is guided by its natural gas import policy guidelines,4/ under which the competitiveness of an import in the markets served is the primary consideration in meeting the public interest test. The DOE also considers, particularly in long-term arrangements, need for and the security of the imported supply. In addition, the National Environmental Policy Act of 1969 (NEPA) requires DOE to consider the environmental effects of natural gas import authorizations.

A. General Considerations

LI Cogen submits that the imported gas would be competitive because the price of the gas would be linked to the prices of available alternate fuels in the New York City area under the pricing formula in the LI Cogen/CanadianOxy gas purchase and sales agreement, and therefore would reflect any changes in the net fuel equivalent of LILCO's avoided cost rate for generated power. No party has questioned this assertion. Further, although LI Cogen is obligated to take or pay for approximately 70 percent of total annual contract quantity for the first contract year and 80 percent of total contract quantity for each contract year thereafter, LI Cogen may make up any quantity of gas paid for but not taken in any subsequent contract year over the term of the LI Cogen/CanadianOxy agreement. Accordingly, on the basis of the record before the agency at this time, DOE finds that the proposed long-term arrangement is competitive and is sufficiently flexible that it should remain competitive over the term of the import authorization requested.

The preliminary finding of competitiveness gives rise to a presumption of need which is uncontested in this proceeding and is supported by the fact that the new proposed cogeneration facility will create new demand when it begins operations. As additional support, LI Cogen states that the Long Island market area served is in need of additional electricity to meet peak period demand and that the use of clean-burning natural gas rather than coal or oil in fueling the proposed cogeneration plant would minimize any possible adverse environmental impact. Thus, DOE preliminarily finds that LI Cogen has shown that the gas would be needed.

There is no dispute with respect to the security of the Canadian gas supply nor of the ability of the gas supplier to provide the imported gas to LI Cogen. Reliability of the Canadian sources of gas is further supported by the contractual warranty of the supplier under which it must deliver the daily contract quantities requested or suffer the penalty of having to reimburse LI Cogen for any additional costs incurred in obtaining alternate gas supplies to replace the delivery shortfall. Therefore, on the basis of the record before it at this time, DOE finds that the Canadian gas supply is and will remain secure.

The blanket import authorization sought by LI Cogen is similar to other blanket arrangements approved by DOE 5/ and would provide LI Cogen with import authority, within prescribed limits, to negotiate and transact individual, spot and short-term purchase arrangements, without further regulatory action. The fact that each purchase of gas would be voluntarily negotiated, short-term, and market-responsive, as LI Cogen indicates that they would be, provides assurance that the gas would be competitive with other gas supplies available to LI Cogen to fuel the proposed cogeneration facility, and would not be purchased if it were not needed. Further, no party has opposed LI Cogen's blanket import proposal. Accordingly based on the record at this time, the DOE finds that LI Cogen's blanket import proposal is consistent with section 3 of the NGA and the DOE policy guidelines.

B. Environmental Determination

LI Cogen's import proposal requires the issuance of several major permits and authorizations before the project can proceed, including FE's import authorization under section 3 of the NGA and FERC's authorization under section 7 of the NGA to construct and operate new 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 FE 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 makes preliminary findings and indicates to the parties the FE's determination at this time on all but the environmental issue in this proceeding. All parties are advised that the issues addressed herein regarding the import of natural gas will be reexamined at the time of the DOE's review of the FERC/NEPA analysis. The results of that reexamination will be reflected in the final opinion and order.

C. Conclusion

After taking into consideration all the information in the record of this proceeding, I find that granting LI Cogen conditional authority to import up to 15,300 Mcf per day of Canadian natural gas over a term of 20 years commencing on the date of first deliveries in accordance with the gas purchase and sales agreement described herein is not inconsistent with the public interest. I also find that granting LI Cogen conditional blanket authority to import up to an additional 2000 Mcf of natural gas per day for a total of 1.4 Bcf over a two-year term to fuel the applicant's proposed cogeneration facility 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. Subject to the condition in Ordering Paragraph B, Long Island Cogeneration Limited Partnership (LI Cogen) is authorized, commencing on the date of first delivery, to import up to 15,300 Mcf per day of Canadian natural gas over a term of 20 years under the long-term import arrangement described in LI Cogen's application, and to import up to an additional 2,000 Mcf per day of Canadian natural gas over a two-year term under the blanket import arrangement described in the same application.

B. The authorizations in Ordering Paragraph A are conditioned upon entry of a final opinion and order after review by the Department of Energy (DOE) of the environmental documentation being prepared by the Federal Energy Regulatory Commission (FERC) and the completion by the DOE of its National Environmental Policy Act responsibilities.

C. LI Cogen 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 of initial deliveries of natural gas imported under Ordering Paragraph A within two weeks after deliveries begin.

D. With respect to the long-term imports authorized by this Opinion and Order, LI Cogen shall file with the Office of Fuels Programs, within 30 days following each calendar quarter, quarterly reports showing, by month, and by contract, the total volume of natural gas imports in MMcf and the average purchase price per MMBtu at the international border. The monthly pricing information shall include a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis. For the imports authorized to be imported under the two-year blanket arrangement, LI Cogen shall file a quarterly report within 30 days following each calendar quarter indicating whether imports of natural gas have been made, and if so, giving, by month, the total volume of natural gas imports in MMcf and the average purchase price per MMBtu at the international border. The reports shall also provide each month the details of each import transaction, including the names of the seller(s) and purchaser(s), duration of the agreement(s), transporter(s), point of entry, markets served, and if applicable, the per unit (MMBtu) demand/commodity charge breakdown of the price, any special contract price adjustment clauses, and any take-or-pay or make-up provisions.

E. 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 proceedings.

F. The authorizations granted in Ordering Paragraph A are subject to the condition stated in Ordering B, the resolution of which may result in further conditions being imposed in subsequent proceedings in this case. LI Cogen and the intervenor in this proceeding shall be bound by any Opinion and Order issued in subsequent proceedings.

Issued in Washington, D.C., on April 23, 1990.

--Footnotes--

1/ Niagara Import Project, Draft Environmental Impact Statement (DEIS), Federal Energy Regulatory Commission (FERC), March 1990, FERC Docket Nos. CP88-171-001 et al. The expanded Transco facilities are addressed by the FERC at Pg. 2-11, Table 1.1-1 and at several other places in the DEIS.

2/ 55 FR 1723, January 18, 1990.

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

4/ 49 FR 6684, February 22, 1984.

5/ See, e.g., ICG Energy Marketing, Inc., 1 FE Para. 70,209 (March 31, 1989); Canterra Natural Gas Inc., 1 FE Para. 70,226 (June 19, 1989); Petro-Canada Hydrocarbons Inc., 1 FE Para. 70,247 (September 26, 1989); Suncor Inc., 1 FE Para. 70,264 (October 30, 1989); and Exxon Corporation, 1 FE Para. 70,272 (December 8, 1989).