Cited as "1 FE Para. 70,317"

Falcon Seaboard Gas Company (ERA Docket No. 88-73-NG), May 21, 1990.

DOE/FE Opinion and Order No. 394

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

I. Background

On December 12, 1988, Falcon Seaboard Gas Company (FSGC) 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 54 MMcf per day, or up to 20 Bcf of Canadian natural gas annually over a fifteen-year period beginning on the date of first delivery. The application was supplemented on August 4, 1989, and on December 28, 1989.1/

Under the import proposal as supplemented, first delivery of gas is expected to occur in November 1990. The imported gas would be used primarily to fuel three proposed 79 megawatt cogeneration plants to be located near Plattsburgh, New York. Up to 1.5 MMcf per day of the imported gas would be sold to the Georgia-Pacific Corporation (Georgia-Pacific) for use in its tissue paper mill in the Plattsburgh area.

The Canadian gas imported under the applicant's proposal would be purchased from FSC Resources Limited (FSC) which, in turn, would purchase the gas from Western Gas Marketing Limited (WGML) or from substitute suppliers if the gas is available at prices more competitive than WGML's. The gas would be purchased by WGML from western Canada producers and transported from the Alberta/Saskatchewan border to a proposed point of interconnection near Champlain, New York, between TransCanada PipeLines Limited (TransCanada) and Falcon Seaboard Pipeline Company (FSPC), an affiliate of the applicant. From there, the imported gas would be transported to the proposed cogeneration plants and to Georgia-Pacific via 26 miles of 12-inch pipeline to be constructed by FSPC.

Under the FSC/FSGC gas purchase agreement dated June 28, 1989, the price that FSGC would pay FSC for the Canadian gas would consist of a demand charge and a commodity charge. The demand charge is the sum of the components of the monthly demand charge that FSC is required to pay WGML, and the monthly demand charge of TransCanada for transportation of the gas. The commodity charge that

FSGC must pay FSC is the sum of the commodity charge that FSC must pay to WGML and the commodity and fuel charge FSC is required to pay TransCanada. The commodity charge payable to WGML would be a function of the weighted average price received by WGML from four local distribution companies (LDCs) in eastern Canada for gas that is resold to the LDCs' "core customers" who are defined as customers using gas primarily for space and water heating and cooking. The commodity charge would be computed by netting back the price paid by the LDCs to the Alberta/Saskatchewan border, less the daily demand charge.

The FSC/FSGC gas purchase contract contains no minimum take or take-or-pay provisions. The contract permits FSGC to direct FSC to purchase substitute, more competitively priced gas supplies in lieu of gas from WGML to the extent that FSC can reduce its maximum daily contract quantity under FSC's gas purchase agreement with WGML. The FSC/WGML agreement permits FSC to reduce its maximum daily contract quantity if the gas supply reserves supporting WGML's supply obligations to FSC fall below certain specified levels and at certain specified times during the first four years of the contract term if FSC pays WGML certain compensation.

The applicant estimates the price of the imported gas at a 100 percent load factor would have been $2.58 per MMBtu if the gas had been flowing in November 1989. Specifically, the demand charge that FSGC would pay to FSC for November 1989 is based on the demand charge that FSC must pay to WGML and TransCanada. The demand charge which FSC must pay WGML consists of the average demand charge of NOVA Corporation of Alberta, which is estimated to be 13 cents per MMBtu for November 1989, plus a negotiated figure of 21 cents per MMBtu. The TransCanada demand charge is estimated to be 60 cents per MMBtu if the gas were flowing in November 1989. This results in a total estimated demand charge to be paid by FSGC for the imported gas for November 1989 of 94 cents per MMBtu at a 100 percent load factor.

The commodity charge that FSGC would pay FSC for November 1989, consisting of an amount equal to the sum of the commodity and fuel charges FSC would pay WGML and TransCanada, is estimated by the applicant to be $1.64 per MMBtu of natural gas. The computation of the estimated commodity price is as follows: The price received by WGML from eastern Canada LDCs for gas resold by the LDCs to core customers for November 1989, estimated to be $1.77 per MMBtu less the estimated demand charge paid by FSC to WGML at a 100 percent load factor of $.34, equals $1.43 per MMBtu. To this amount is added the estimated commodity and fuel charges paid to TransCanada of $0.09 and $0.12 respectively for a total estimated commodity charge of $1.43 + $0.09 + $0.12 = $1.64 per MMBtu for November 1989.

The electricity produced by the three proposed cogeneration facilities would be sold to the New York State Electric and Gas Corporation (NYSEG). The steam produced would be sold to nearby firms, including Georgia-Pacific. The applicant asserts that the cogeneration projects are expected to be able to sell power to NYSEG at a discount from NYSEG's long-term avoided costs of producing electricity. The applicant also asserts that each of the proposed facilities would be operated as a qualifying facility under section 201 of the Public Utilities Regulatory Policies Act of 1978.

In support of the application, FSGC asserts that the price of the imported gas would be competitive since the commodity charge is, in part, a function of the price received by WGML for gas sales to certain LDCs in eastern Canada and since FSGC can direct the exporter, FSC, to obtain substitute supplies if substitute supplies are available at a more competitive price. The applicant states that there is currently no other gas supply service in the Plattsburgh, New York, area from which gas for the cogeneration projects could be purchased and that the interstate pipelines nearest to the Plattsburgh area are over 125 miles away. In addition, except for the small amount of gas resold to Georgia-Pacific, FSGC and its affiliates would be seller, purchaser and end-user of the gas and thus would suffer the losses that might be incurred if the gas prices were not competitive.

A notice of the application was issued January 24, 1990, inviting protests, motions to intervene, notices of intervention, and comments to be filed by March 2, 1990.2/ One motion to intervene was received, filed by WGML in support of the application. This order grants intervention to WGML.

II. Decision

The application of FSGC 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 the import in the markets served is the primary consideration in meeting the public interest test. The DOE also considers, particularly in long-term arrangements such as this, need for and the security of the gas 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

FSGC submits that the price of the imported gas would be competitive

because the price of the gas is linked to the price being paid to WGML by LDCs in eastern Canada, who are customers in the same general market area as the proposed cogeneration plants. Specifically, the commodity charge would be based on the weighted average price received by WGML from four local distribution companies in eastern Canada, netted back to the Alberta/Saskatchewan border, less the daily demand charge. No party has questioned these assertions. Since the application indicates that there are no other gas suppliers serving the Plattsburgh, New York, area from whom the proposed cogeneration plants could purchase the gas, no price linkage with the gas prices of a competing supplier is possible. Further, the FSC/FSGC gas purchase contract permits FSGC to purchase substitute gas supplies for gas obtained from WGML if such supplies are more competitively priced. The FSC/FSGC contract contains no minimum take or take-or-pay provisions. In addition, FSGC notes that it and its affiliates will be seller, purchaser and end-users of most of the gas and would suffer the losses that could occur from an uncompetitive gas supply contract. Accordingly, on the basis of the record before the agency at this time, DOE finds that the proposed gas supply arrangement is competitive and sufficiently flexible to 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 cogeneration facilities will create new demand when they began operations in an area not currently served by any supplier from whom they could buy other natural gas supplies. Need for the gas is also reflected in the fact the Plattsburgh, New York, area served is in need of additional electricity to meet expected demand and the use of clean-burning natural gas rather than coal or oil to fuel the proposed cogeneration plants would minimize any possible adverse environmental impact. The DOE therefore preliminarily finds that WSGC has shown that the gas would be needed.

There is no dispute as to the security of the Canadian gas supply or as to the ability of the gas supplier to provide the gas contracted for to WSGC. In addition, the Canadian supplier, FSC, has the contractual right to purchase other gas supplies should the gas reserves supporting WGML's supply obligations fall below certain specified levels. Therefore, on the basis of the record before it at this time, DOE finds that the Canadian gas supply is and will remain secure.

B. Environmental Determination

FSGC'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 the Federal Energy Regulatory Commission's (FERC) 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 FSGC conditional authority to import up to 54 MMcf per day of Canadian natural gas or up to 20 Bcf annually over a fifteen-year period beginning on the date of the first delivery, in accordance with the proposed import arrangement described herein, 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, Falcon Seaboard Gas Company (FSGC) is authorized to import up to 54 MMcf per day of Canadian natural gas or up to 20 Bcf annually over a 15-year period beginning on the date of the first delivery, in accordance with the provisions described in its application.

B. The authorization in Ordering Paragraph A is 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 and the completion by the DOE of its National Environmental Policy Act responsibilities.

C. WSGC shall notify the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-5O, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in writing of the date of initial delivery of natural gas imported under Ordering Paragraph A within two weeks after deliveries begin.

D. With respect to the imports authorized by this Opinion and Order, WSGC 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 Mcf 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.

E. The motion to intervene, as forth in this Opinion and Order, is hereby granted, provided that participation of intervenor shall be limited to matters specifically set forth in the 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 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. FSGC and the intervenor in this proceeding shall be bound by any Opinion and Order issued in subsequent proceedings.

Issued in Washington, D.C., May 21, 1990.

--Footnotes--

1/ The application was also supplemented on April 6, 1990, to correct a typographical error in one of the underlying gas purchase agreements so that the term of the agreement would end on October 31, 2005, instead of October 31, 2004. In addition, the supplement reported the formation of a new affiliate of the applicant, North Country pipeline Corporation, an affiliate not involved in the gas import proposal.

2/ 55 FR 3255, January 31, 1990.

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

4/ 49 FR 6684, February 22, 1984.