Cited as "1 FE Para. 70,354"

Transco Energy Marketing Company (FE Docket No. 89-75-NG), September 29, 1990.

DOE/FE Opinion and Order No. 426

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

I. Background

On October 30, 1989, Transco Energy Marketing Company (TEMCO) 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 from CanStates Gas Marketing (CanStates) up to 48,400 Mcf per day of Canadian natural gas over a 15-year period. TEMCO intends to sell the imported gas to Hopewell Cogeneration Limited Partnership (Hopewell), but also requested "blanket" authorization to import up to the full 48,400 Mcf per day on a best efforts basis to the extent such volumes are not taken by Hopewell. The gas would be imported at the Niagara import point of Tennessee Gas Pipe Line Company (Tennessee) near Niagara Falls, New York, and transported in the United States by various domestic pipelines. TEMCO filed a supplement to its application on January 17, 1990.

TEMCO, a Delaware corporation with its principal place of business in Houston, Texas, is a wholly owned subsidiary of Transco Energy Service Corporation which, in turn, is a wholly owned subsidiary of Transco Energy Company. Since commencing operation in May 1985, TEMCO has been actively engaged in the business of selling and purchasing natural gas in the long-term and spot natural gas market.

TEMCO would purchase the requested volumes pursuant to the terms of the long-term gas sales contract between TEMCO and CanStates (CanStates contract) and would sell the gas to Hopewell pursuant to the terms of the gas sales agreement between TEMCO and Hopewell (Hopewell agreement). The CanStates contract would run for a term of 15 years from the commercial operation date of the Hopewell cogeneration plant or until July 31, 2005, whichever occurs earlier. Pursuant to the contract, TEMCO would purchase gas on the basis of a two-part pricing structure consisting of a monthly transportation charge and a monthly commodity charge. The transportation charge would consist of the Canadian transportation charges incurred by CanStates for firm transportation of the TEMCO volumes in Canada. The commodity charge would be based on TEMCO's weighted average sales price for gas, which would be adjusted to reflect the transportation cost differential between the costs incurred to deliver gas from Alberta, Canada, to East Coast markets and the costs of delivering Gulf Coast gas to such markets. The border price under the CanStates contract for March 1990 would have been $2.406 at 100 percent demand. The demand component would have been $.99 and the commodity component would be have been $1.416. Subject to the terms of the CanStates contract, TEMCO would purchase a minimum annual volume equal to 70 percent of the contract demand.

Hopewell, a joint venture between TEVCO Power Company, CRSS Capital, Inc., and Mission Energy Company, owns the Hopewell Cogeneration Project plant in Hopewell, Virginia. The plant is a 356.5-megawatt combined cycle facility that will supply steam to Aqualon Company and sell electricity to Virginia Electric and Power Company (Virginia Power). The plant has been certified as a "qualifying facility" under the Public Utilities Regulatory Policies Act of 1978, and is currently in operation.

Pursuant to the terms of the Hopewell agreement, TEMCO has agreed to sell and Hopewell has agreed to buy all of Hopewell's natural gas requirements up to 80,000 dekatherms (Dt) per day on a firm basis for a term that runs until 15 years from the earlier of (1) August 1, 1990, or, (2) the commercial operation date of the Hopewell cogeneration plant. The 31,600 Dt per day difference between the import request and TEMCO's supply obligation to Hopewell will be met with U.S. Gulf Coast natural gas supplies.

The price of the gas to be purchased by Hopewell would be based upon an October 1986 benchmark price of $2.70 per MMBtu (base price) and would be adjusted each month (adjusted energy purchase price) to equal the lesser of (1) the adjusted gas purchase price, or (2) the adjusted oil purchase price, which are calculated as follows:

$$\text{Adjusted Gas Purchase Price} = \$2.70 \times \frac{\text{Reference Gas Index}}{\text{Base Gas Index}}$$

$$\text{Adjusted Oil Purchase Price} = \$2.70 \times \frac{\text{Reference Oil Index}}{\text{Base Oil Index}}$$

The reference gas index is equal to the average of (1) the national average price paid by major interstate pipelines to producers, and (2) the national energy average gas price paid by electric utilities. The base gas index is

$2.165 and is equal to the reference gas index as of October 1986. The reference oil index is the average cost of No. 2 fuel oil delivered to the Chesterfield Power Station of Virginia Power for the proceeding month, while the base oil index is $2.687 and is equal to the price Virginia Power would have paid for No. 2 fuel oil delivered to the Chesterfield Power Station on September 29, 1986.

The base price of $2.70 MMBtu or any of the adjustment indices of the Hopewell agreement may be redetermined after three years and biannually thereafter. Also, after the first three years, there are various other price redetermination triggering devices.

Although TEMCO is required to deliver and Hopewell is required to take all of its gas requirements for the cogeneration facility up to 80,000 Dt per day from TEMCO, there is no take-or-pay or minimum take provision. Also, in the event TEMCO is unable to deliver Hopewell's requested volumes on any day, and TEMCO's inability is not excused under the terms of the contract, TEMCO must compensate Hopewell for the difference between Hopewell's actual purchase price and the contract price, plus $.O04 per MMBtu.

The proposed volumes would be imported at the interconnection between the facilities of Tennessee and TransCanada PipeLines Limited at the international border near Niagara Falls, New York, and redelivered by Tennessee to National Fuel Gas Supply Corporation (National Fuel) at Marilla, New York. From Marilla, National Fuel would transport and deliver the gas to Transcontinental Gas Pipe Line Corporation (Transco) at the proposed interconnection between National Fuel and Transco at the Leidy storage field in Clinton County, Pennsylvania. Transco would transport the proposed imports to Commonwealth Gas Pipeline Corporation (Commonwealth) at Emporia, Virginia, which would deliver the gas to Commonwealth Gas Service for redelivery to Hopewell.

A notice of the application was issued on March 11, 1990, inviting protests, motions to intervene, notices of intervention, and comments to be filed by April 23, 1990.1/ Interventions in support of the application were filed by Commonwealth, Hopewell, Primesouth, Inc., CanStates and Transco. Tennessee Gas Pipeline Company filed an intervention without comment. This order grants intervention to all movants.

II. Decision

The application of TEMCO 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." 2/ In making its section 3 determination the DOE is guided by its natural gas import policy guidelines,3/ under which the competitiveness of the import in the markets served is the primary consideration for meeting the public interest test. The DOE also considers, particularly in long-term arrangements, need for and the security of the imported gas supply. In addition, DOE considers the environmental effects of the proposed natural gas import arrangement.

A. General Policy Considerations

The guidelines contemplate that contract arrangements should be sufficiently flexible to permit pricing and volume adjustments as required by market conditions. TEMCO's uncontested import proposal, as set forth in its application, is consistent with the policy guidelines. TEMCO has freely negotiated a long-term gas purchase arrangement for firm supplies of natural gas under contract terms that will ensure that the price of the gas will remain market responsive and competitive with TEMCO's other sources of supplies over the term of the contract. In addition, the Hopewell agreement gives TEMCO a market for the gas while ensuring Hopewell a firm supply of natural gas at competitive prices.

Need for natural gas is viewed under the DOE guidelines as a function of marketability and gas is presumed to be needed if it is competitive. We have found that TEMCO's proposed import arrangement is competitive and, therefore, can be presumed to be needed. Finally, natural gas has been imported from Canada for many years and there has been no instance of a major natural gas supply interruption that would call into question Canada's reliability as a natural gas supplier to this country.

TEMCO requested what it termed as a 15-year "blanket" authorization to import any of the 48,400 Mcf per day of natural gas that Hopewell does not take in order to make those volumes available to other markets in the U.S. on a short-term, spot market basis. TEMCO stated that, other than the term, the blanket authorization requested is identical to the blanket authorization TEMCO currently holds.

Pursuant to its blanket authorization program, the DOE routinely grants authorizations to import and/or export natural gas and liquefied natural gas for sale under to-be-negotiated terms that will reflect market conditions. However, to ensure that blanket authorizations are sufficiently flexible to respond to changes in market conditions, such authorizations have been limited to two-year periods. Because such sales will occur only if the gas is marketable, competitively-priced and needed, import arrangements that facilitate such transactions are presumptively in the public interest.

The CanStates contract is the relevant import arrangement being considered in this order. The Hopewell agreement is the downstream sales agreement for the proposed imports. As such, the Hopewell agreement is useful to the DOE in making its public interest determination on TEMCO's application, especially with regard to the issues of marketability and need, but the Hopewell agreement is not the import contract. TEMCO has a long-term contract with CanStates to purchase specific volumes of firm gas supplies using an indexed pricing formula. While TEMCO contemplates selling the majority of the CanStates supplies to Hopewell, it requests authority to sell to other domestic customers as well. TEMCO's request is fundamentally different from a blanket authorization request: the importer is known, the exporter is known, the import point is known, the volumes are known, the pricing provisions are known. Therefore, the DOE will issue an order authorizing TEMCO to import natural gas pursuant to the CanStates contract regardless of whether the gas is sold to Hopewell or to other TEMCO customers. In doing so, we wish to make clear that the DOE is not changing its policy of limiting blanket authorizations to two years.

B. Environmental Considerations

Environmental concerns are an important element of DOE's public interest determination. In general, DOE considers environmental issues in the context of the National Environmental Policy Act of 1969 (NEPA).4/ The DOE participated as a cooperating agency during the preparation of, and has adopted, the NIP Project Final Environmental Impact Statement (FEIS) issued by the Federal Energy Regulatory Commission (FERC).5/ The FEIS examined the environmental effects of constructing and operating the NIP Project, including those facilities that would be used by TEMCO to import and transport the natural gas to Commonwealth. The DOE has concluded that the NIP Project FEIS is a complete document that complies with the NEPA process and provides an adequate basis to evaluate the environmental aspects of the section 3 public interest determination concerning the import arrangement.

The DOE has used the FEIS, as well as conducting an independent review, in assessing the environmental consequences of granting the proposed import. The DOE's findings are discussed in its Consolidated Record of Decision (ROD) for the NIP Project facilities. The ROD was issued in conjunction with this and other NIP Project related orders and is being published in the Federal Register.6/ The DOE determined that the anticipated overall physical impacts on the natural environment are relatively minor and can be mitigated, and thus are environmentally acceptable, especially when compared to the substantial benefits to be derived from the import arrangement in providing additional electrical supplies utilizing natural gas, which is less polluting than alternative fuels.

After taking into consideration all of the information in the record of this proceeding, I find that granting TEMCO authorization to import up to 48,400 Mcf per day of Canadian natural gas over a term of 15 years 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. Transco Energy Marketing Company (TEMCO) is authorized to import up to 48,400 Mcf per day of Canadian natural gas from CanStates Gas Marketing (CanStates) over a 15-year term, in accordance with the gas sales contract between TEMCO and CanStates described in the application and discussed in this Opinion and Order.

B. TEMCO shall notify the Office of Fuels Programs (OFP), 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 delivery of natural gas imported under Ordering Paragraph A above within two weeks after deliveries begin.

C. TEMCO shall file with the OFP, within 30 days following each calendar quarter, quarterly reports showing by month the total volumes of natural gas imports in Mcf and the price for the imports per MMBtu at the international border. The reports shall also provide the names of the repurchasers and the resale price for the imports in MMBtu's if the repurchaser is Hopewell Cogeneration Limited Partnership or the average resale price per MMBtu's if the gas is resold to other TEMCO customers. The reports shall provide further details, including the markets served and, if applicable, the per unit (MMBtu) demand/commodity charge breakdown of both the border and the resale prices. TEMCO shall also indicate if it incurred any take-or-pay charges under the minimum take provisions of the TEMCO/CanStates contracts.

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.

Issued in Washington, D.C., on September 29, 1990.

--Footnotes--

1/ 55 FR 10663, March 22, 1990.

2/ 15 U.S.C. 717b.

3/ 49 FR 6684, February 22, 1984.

4/ 42 U.S.C. 4321, et seq.

5/ FERC EIS-0057, June 15, 1990 (DOE EIS-0153).

6/ The ROD was issued under the Council on Environmental Quality Regulations implementing the procedural provisions of NEPA and the DOE's guidelines for compliance with NEPA (52 FR 47662, December 15, 1987).