Cited as "1 FE Para. 70,355"

Energy Marketing Exchange, Inc. (FE Docket No. 89-88-NG), September 29, 1990.

DOE/FE Opinion and Order No. 427

Order Granting Authorization to Import Natural Gas from Canada and Granting Intervention

I. Background

On October 24, 1989, Energy Marketing Exchange, Inc. (EME), 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 6,000 MMBtu (approximately 5,976 Mcf) per day of Canadian natural gas over a 15-year term, commencing on the date of first delivery. The gas imported under the proposed long-term arrangement would be purchased from Ramarro Resources Ltd. (Ramarro) and used to fuel an existing 35 megawatt (MW) cogeneration facility located in Milford, New Jersey. EME also requests "blanket" authority to import and sell up to the full 5,976 Mcf per day to other end-use markets served by Elizabethtown Gas Company (Etown), the local distribution company (LDC) serving the cogeneration plant, and other LDC's if the imported gas is not required by the Milford facility. The gas would be imported at the international boundary of the United States and Canada near Niagara, New York, and transported within the United States through existing and proposed pipeline facilities.

EME, a wholly owned subsidiary of KCS Group, Inc., a Delaware corporation, is a New Jersey corporation and has marketed natural gas to industrial end-users, electric utility companies, and LDC's since early 1984. EME states that it has a 10-year contract, that may be extended for an additional five years, to supply the natural gas and fuel oil requirements for an existing cogeneration facility owned by Kamine Milford Limited Partnership (KMLP) and located on a leased site at the Reigel Products Corporation (Reigel) paper plant in Milford, New Jersey. The cogeneration facility is a qualified facility under the Public Utility Regulatory Policies Act of 1978. The steam produced by the facility will be sold to Riegel. The electricity will be sold to Jersey Central Power and Light Company (JCP&L) under a 15-year power purchase agreement approved by the New Jersey Board of Public Utilities on August 14, 1987.

EME proposes to purchase the gas to be imported from Ramarro pursuant to a gas sales contract executed on July 24, 1989, and enclosed as part of the application. Under the agreement, EME would purchase from Ramarro a daily contract quantity of up to 5,976 Mcf during a 15-year term. If EME nominates in any contract year less than 70 percent of the daily contract quantity, Ramarro may assess take-or-pay charges, subject to subsequent make-up provisions. If Ramarro delivers less than EME's nomination, Ramarro is obligated to indemnify EME against any incremental gas costs and expenses reasonably incurred by EME to replace the Ramarro supply.

The proposed contract would require EME to pay Ramarro an adjusted base price, subject to renegotiation under certain circumstances, less the cost of transporting the gas to the Niagara import on TransCanada Pipeline Limited (TCPL). EME states that the base price for gas delivered during the first quarter of 1989 would have been $2.40 per MMBtu (U.S.) ($2.41 per Mcf). The contract provides that 40 percent of the base price will be adjusted at the beginning of each contract year to reflect changes in gas costs paid by JCP&L during the prior year, as reported in DOE/EIA publication Cost and Quality of Fuel for Electric Utility Plants. Sixty percent of the base price will be adjusted each calendar quarter to reflect changes in the price of gas delivered to Transcontinental Gas Pipe Line Corporation (Transco) in Louisiana as posted in "Prices of Spot Gas Delivered to Pipelines" and published in Inside FERC's Gas Market Report during the last two months of the prior quarter and the first month of the current quarter. Finally, the contract provides for a floor price equal to 98 percent of the Alberta average market price over each contract year.

EME indicates that Ramarro would transport the natural gas through the pipeline facilities of TransGas Limited in the Province of Saskatchewan to an existing interconnection with the pipeline facilities of TCPL. The gas would then be transported on the TCPL system to an existing interconnection with Tennessee Gas Pipeline Company (Tennessee) at Niagara, New York. From the Tennessee interconnect with TCPL, Tennessee would transport the gas to National Fuel Gas Corporation (National Fuel) at Clarence, New York. From the National Fuel interconnection with Tennessee, National Fuel would transport the gas to Transco at Wharton, Pennsylvania. From the Transco interconnection with National Fuel, Transco would transport the gas to the city-gate of Etown.

In support of its application, EME states that the gas to be imported will provide a reliable, long-term and secure supply of competitively priced gas to the cogeneration facility and/or to other end-use markets. The contract's price provisions provide for market-responsive pricing subject to quarterly adjustments, renegotiation of the base price in the fifth and tenth contract years, and arbitration in the event agreement on changes cannot be reached. Further, EME asserts that the requested import will supply clean burning natural gas as fuel to a facility that will supply approximately 35 MW of electric power to the Mid-Atlantic region.

The applicant also states that Ramarro warrants in the contract that it has sufficient gas reserves to deliver the full daily contract quantity over the contract term and will dedicate reserves described in the contract to the performance of this obligation. Ramarro further commits to indemnify EME for certain incremental costs and expenses in the event that EME must obtain an alternate fuel supply because of Ramarro's inability to deliver the contract volumes. For the above reasons, EME maintains that the proposed import is consistent with the public interest.

A notice of the application was issued April 5, 1990, inviting protests, motions to intervene, notices of intervention, and comments to be filed by May 7, 1990.1/ One motion to intervene was received from KMLP without comment. This order grants intervention to KMLP.

II. Decision

The application of EME 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 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, DOE considers the environmental effects of natural gas import authorizations.

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. EME's uncontested import proposal, as set forth in its application, is consistent with the policy guidelines. EME has freely negotiated a long-term gas purchase arrangement under contract provisions that provide for market-responsive pricing subject to quarterly and annual adjustments. In addition, the EME/KMLP contract gives EME a market for the gas while ensuring the cogenerational facility 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 EME'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.

EME requested "blanket" authorization in order to market natural gas not used in the cogeneration facility to other purchasers in the United States. DOE's blanket authorization program provides an authorization holder with approval, within prescribed limits, to negotiate and transact individual, spot and short-term import arrangements without further regulatory action. In this case, EME has a long-term contract with a Canadian seller for specific volumes of firm gas supplies using an indexed pricing formula. EME contemplates using the natural gas in the cogenerational facility but may resell the gas to other domestic customers. EME'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 EME to import natural gas pursuant to the Ramarro contract regardless of whether the gas is sold to the cogenerational facility or to other EME customers.

B. Environmental Determination

Environmental concerns are an important element of DOE's public interest consideration. 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 Niagara Import Point (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 will be used by EME to implement its proposed import arrangement. 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 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.

C. Conclusion

After taking into consideration all the information in the record of this proceeding, I find that granting EME authority to import up to 6,000 MMBtu (approximately 5,976 Mcf) per day of Canadian natural gas over a term of 15 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.

ORDER

For the reasons set forth above, pursuant to section 3 of the Natural Gas Act, it is ordered that:

A. Energy Marketing Exchange, Inc. (EME), is authorized, commencing on the date of first delivery, to import up to 6,000 MMBtu (5,976 Mcf) per day of Canadian natural gas over a term of 15 years in accordance with its gas sales contract with Ramarro Resources Ltd. (Ramarro), as described in EME's application and this Opinion and Order.

B. EME 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 deliveries of natural gas imported under Ordering Paragraph A within two weeks after deliveries begin.

C. EME 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 average resale prices per MMBtu and the names of the repurchaser(s). 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. EME shall also indicate if it incurred any take-or-pay charges under the minimum take provisions of the EME/Ramarro contract.

D. 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.

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

--Footnotes--

1/ 55 FR 12708, April 5, 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).