Cited as "1 FE Para. 70,356"

Elizabethtown Gas Company (FE Docket No. 90-25-NG), September 29, 1990.

DOE/FE Opinion and Order No. 428

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

I. Background

On April 11, 1990, Elizabethtown Gas Company (Elizabethtown) 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 on a firm basis up to 10,000 Mcf per day of Canadian natural gas, as well as additional interruptible supplies, over an initial term of 15 years. On June 29, 1990, Elizabethtown amended its application to specify that the interruptible supplies would be limited to up to 5,000 Mcf per day of natural gas. The proposed imports would be purchased from Western Gas Marketing Limited (WGML), a subsidiary of TransCanada PipeLines Limited (TCPL). The requested volumes would be delivered to Elizabethtown at the Niagara import point of Tennessee Gas Pipeline Company (Tennessee) near Niagara Falls, New York, and transported in the United States by Tennessee, National Fuel Gas Supply Corporation and Transcontinental Gas Pipe Line Corporation.

Elizabethtown, a wholly owned subsidiary of NUI Corporation, is a local distribution company providing natural gas and mixed gas service in central and northwestern New Jersey. Elizabethtown's rates and services are subject to the jurisdiction of the New Jersey Board of Public Utilities.

On October 30, 1989, Elizabethtown and WGML signed a precedent agreement obligating the parties to enter into a gas sales contract, substantially in the form of the pro forma gas sales contract attached to the precedent agreement, upon receipt and acceptance of all necessary regulatory authorizations and consummation of all necessary transportation arrangements.

Deliveries under the gas sales contract would commence on the later of November 1, 1991, or when all regulatory authorizations have been received and transportation facilities constructed. WGML would sell and deliver to Elizabethtown up to 10,000 Mcf per day (daily contract quantity) on a firm basis over a 15-year term beginning on the date of initial deliveries. The gas sales contract would continue in effect beyond the 15-year period for so long

as all necessary authorizations were effective, subject to termination by either party on twelve months notice. The annual contract quantity would be the product of the daily contract quantity and the number of days in the relevant contract year (approximately 3,650 MMcf annually). The total contract quantity would be 54,790 MMcf of natural gas.

The gas sales contract contains an annual triggering quantity which is 60 percent of the annual contract quantity. If Elizabethtown takes less than the annual triggering quantity over a combined two-year period, WGML's sole remedy is to reduce the daily contract quantity by the amount Elizabethtown is deficient. There are no take-or-pay provisions.

In addition, the gas sales contract provides for Elizabethtown to purchase from WGML up to 5,000 Mcf per day of natural gas in excess of the daily contract quantity on a best-efforts basis. Any purchases of excess gas would be used in determining the annual triggering quantity.

Elizabethtown could also increase the firm daily contract quantity by up to 5,000 Mcf per day by notifying WGML in writing. Such daily contract quantity increases would be effective 25 months after receipt of notice, subject to required regulatory authorizations.

Pursuant to the gas sales contract, Elizabethtown would purchase gas on the basis of a two-part demand/commodity rate. The demand charge would consist of: (1) the demand toll applicable to the firm transportation of the gas on TCPL's and NOVA Corporation of Alberta's pipeline systems, and (2) a supply reservation charge reflecting WGML's costs in securing a gas supply, maintaining and administering such gas supply and arranging for the transportation of the gas.

The commodity charge would be calculated by subtracting the demand charge from an adjusted base price. The adjusted base price would be seasonably differentiated and recalculated monthly. During the winter season (November-March) the adjusted base price would be indexed to the weighted average cost of long-term firm gas supplies purchased by Elizabethtown. The adjusted base price during the summer season (April-October), for purchases up to a 30 percent load factor, would be indexed to the average cost of all gas supplies purchased by Elizabethtown. For those summer purchases in excess of a 30 percent load factor, the commodity charge would be the lessor of the spot gas price or the No. 6 fuel oil price in Elizabethtown's market.

In addition, Elizabethtown would pay any demand and commodity charges, on an as-billed basis, equal to the charge for transportation on TCPL's

pipeline system as approved by Canada's National Energy Board applicable to the provision of deliveries at pressures in excess of 400 kilopascals at the Niagara delivery point.

The gas sales contract allows for yearly renegotiation of the pricing provisions upon written notice, and for arbitration if renegotiation does not result in a mutually agreeable resolution. Furthermore, TCPL has warranted WGML's performance under the gas sales contract.

A notice of the application was issued July 17, 1990, inviting protests, motions to intervene, notices of intervention, and comments to be filed by August 23, 1990.1/ Interventions in support of the application were filed by National Fuel Gas Supply Corporation and by WGML. This order grants intervention to all movants.

II. Decision

The application of Elizabethtown 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 in 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 natural gas import arrangements.

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. Elizabethtown's uncontested import proposal, as set forth in its application, is consistent with the policy guidelines. Elizabethtown has freely negotiated a long-term gas purchase arrangement for firm as well as interruptible supplies of natural gas under contract terms that will ensure that the price of the gas will remain market responsive and competitive with Elizabethtown's other sources of supplies over the term of the contract.

Need for the 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 Elizabethtown's proposed import is 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.

Elizabethtown requested that the DOE authorize it to import Canadian natural gas for an initial term of 15 years and continuing thereafter for as long as the gas sales contract remains in effect. In order to ensure that import arrangements continue to meet the NGA section 3 public interest requirement, the DOE's policy is to issue authorizations for discrete periods of time. Therefore, we will limit the authorization to the initial 15-year term of the gas sales contract. Elizabethtown may request an extension of its authorization at the appropriate time.

Also, the gas sales contract contains a provision which allows Elizabethtown to increase the firm daily contract quantity by up to 5,000 Mcf per day by notifying WGML in writing. Elizabethtown can request an amendment of its authorization at such time as it decides to take additional natural gas. Under the contract, such daily firm quantity increase would not be effective until 25 months after receipt of notice. Because of the length of time between the notification and the effective date, it is not necessary at this time for the DOE to authorize any increased firm volumes Elizabethtown may nominate nor should the amendment process cause unnecessary delay.

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 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 Elizabethtown 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 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 meeting current and future energy needs in the Northeast.

After taking into consideration all of the information in the record of this proceeding, I find that granting Elizabethtown authority to import up to 10,000 Mcf per day on a firm basis, and up to 5,000 Mcf per day on an interruptible basis, 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. Elizabethtown Gas Company (Elizabethtown) is authorized to import on a firm basis up to 10,000 Mcf per day, and up to 5,000 Mcf per day on an interruptible, best-efforts basis, of Canadian natural gas from Western Gas Marketing Limited (WGML) over a 15-year term commencing on the date of first delivery, in accordance with the gas sales arrangement with WGML described in the application and discussed in this Opinion and Order.

B. Elizabethtown shall notify the Office of Fuels Programs (OFP), Fossil Energy, 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 above within two weeks after deliveries begin.

C. Elizabethtown shall file with the OFP a copy of the gas sales contract between Elizabethtown and WGML within two weeks after the contract is entered into. Such filing shall delineate any differences between the gas sales contract and the pro forma gas sales contract submitted with Elizabethtown's application discussed above.

D. Elizabethtown shall file with the Office of Fuels Programs, within 30 days following each calendar quarter, quarterly reports showing by month the total volume of firm and interruptible natural gas imports in Mcf and the average purchase price per MMBtu for each at the international border. The monthly pricing information shall include a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis. The demand price should be further broken down to show the reservation charge.

E. 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., September 29, 1990.

--Footnotes--

1/ 55 FR 30030, July 24, 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).