

Cited as "1 FE Para. 70,374"

Orchard Gas Corporation (FE Docket No. 89-54-NG), November 15, 1990.

DOE/FE Opinion and Order No. 446

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

I. Background

On August 11, 1989, Orchard Gas Corporation (Orchard) filed with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127, an application, supplemented by letters dated September 8, 1989, November 29, 1989, and February 8, 1990, requesting authorization to import up to 25,000 Mcf per day of Canadian natural gas for a term of 15 years.

Orchard would import the natural gas as agent for (1) MASSPOWER, a joint venture formed for the purpose of owning and operating a 240 megawatt (MW) cogeneration facility to be constructed in Springfield, Massachusetts, and (2) Granite State Gas Transmission System (Granite State), an interstate pipeline. The natural gas would be used principally to fuel MASSPOWER's cogeneration facility. Prior to commercial operation of the facility, the imported natural gas would be purchased by and delivered to Granite State for resale to its distribution company customers.

Orchard, a Delaware corporation, is owned and controlled by J. Makowski Company, Inc. (J. Makowski). MASSPOWER, with its principal office in Boston, Massachusetts, is comprised of affiliates of Bechtel Development Company, Tenneco Gas, General Electric Company, Granite State, and J. Makowski. Granite State serves two affiliated distribution company customers, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities).

Construction of the combined cycle cogeneration facility at the Monsanto Chemical Company (Monsanto) site in Springfield, Massachusetts, is expected to be completed in early 1993. It would be operated as a "qualifying facility" under section 201 of the Public Utility Regulatory Policies Act of 1978. In addition, MASSPOWER has filed a Certification of Compliance with the coal capability requirement for proposed new electric powerplants under the Powerplant and Industrial Fuel Use Act of 1978, as amended. MASSPOWER's cogeneration facility will provide electrical power to a number of Connecticut and Massachusetts municipal electric companies, including Massachusetts

Municipal Wholesale Electric Company, Commonwealth Electric, and Boston Edison Company. In addition, the steam produced is to be sold to Monsanto.

Under Orchard's precedent gas sales agreement with ProGas Limited (ProGas), dated May 1, 1989, ProGas will supply MASSPOWER through Orchard as agent, up to 25,000 Mcf of Canadian natural gas per day. In addition to the firm volumes, MASSPOWER may purchase excess gas to the extent it is available. If MASSPOWER's purchases from ProGas fall below 75 percent of the aggregate of the maximum daily quantities in a contract year (25,000 x 365 days), and that deficiency is not made up in subsequent years, MASSPOWER must pay a deficiency charge levied on the volumes not taken below the required quantity, equal to the average of the commodity charges in effect during the year plus interest. ProGas also has the option, in the event MASSPOWER purchases less than the minimum volume for a two-year period, to reduce permanently the daily contract quantity.

The price that MASSPOWER would pay for firm volumes of gas consists of a demand and commodity charge. The proposed price provisions would also apply to the volumes imported on behalf of Granite State prior to the time that the cogeneration facility is operational. Under the contract, the demand charge, separately determined for each month, is calculated by multiplying the average of the daily contract quantities of natural gas delivered in the month by the monthly demand charge rate (MDR). The MDR is the sum of the monthly demand toll per MMBtu on the TransCanada PipeLine Limited (TransCanada) system for transportation of natural gas from the Alberta border to the point of delivery; the monthly demand toll per MMBtu as billed by Nova Corporation of Alberta (NOVA) to ProGas for pipeline transportation of the natural gas to the Alberta border (approximately U.S. \$0.13/MMBtu); and the monthly demand toll per MMBtu as billed by ProGas for its monthly services and approved by the Alberta Petroleum Marketing Commission in its most recent monthly determination (approximately U.S. \$0.030/MMBtu). The commodity charge for the natural gas consists of (1) the adjusted base price, (2) the commodity cost per MMBtu billed by NOVA, (3) the commodity cost per MMBtu billed by TransCanada, and (4) the cost of fuel for transportation. The proposed contract establishes a negotiated initial base price of \$1.70 (U.S.) per MMBtu, which is tied to the New England Power Pool (NEPOOL) Fossil Fuel Index.¹ The adjusted base price would be determined each month by multiplying \$1.70 per MMBtu by the ratio of the average monthly NEPOOL Index Price for the preceding three-month period to the price determined for the base period of September through November 1988.

Either party may initiate renegotiation of the price provisions prior to the commencement of each contract year. If they are unable to agree, the

matter may be referred to arbitration. In the event that ProGas cannot meet its sales obligations, the contract provides that substitute supplies may be secured from other sources.

The purchase contract permits ProGas and Orchard to make marketing arrangements when necessary to assure a market for gas which is surplus to Orchard's requirements. ProGas must use reasonable efforts to market such volumes using the firm transportation capacity under contract to Orchard in the United States. The terms and conditions of each special marketing arrangement, including the volume to be made available, the period during which available, the demand credit and the special commodity charge, will be made a part of the purchase contract.

Such special marketing arrangements are subject to the rights and obligations of Granite State under its release gas agreement with MASSPOWER. Under this agreement, Granite State will purchase as release gas the difference between the quantity taken by MASSPOWER and 75 percent of the daily contract quantity (DCQ) if that quantity is less than 75 percent of the DCQ at a price that varies with the season but is generally equal to the sum of the commodity charge under the import purchase contract and the commodity charge under the U.S. transportation contracts. If MASSPOWER takes less than 100 percent of the DCQ, Granite State is entitled to purchase this quantity, excluding quantities released below 75 percent of the DCQ, and subject to provisions for other price offers, at a price(s) that is in no event less than the sum of the commodity charge under the purchase contract and the commodity charges under the U.S. transportation contracts.

The natural gas purchased from ProGas would be transported into the United States by means of the proposed Iroquois/Tennessee Pipeline Project (Iroquois/Tennessee) through an interconnection with the pipeline facilities of TransCanada PipeLines Limited to be constructed near Iroquois, Ontario. The facilities proposed by Iroquois Gas Transmission System (Iroquois)^{2/} would involve 369.4 miles of 30 and 24 inch diameter pipeline beginning at the United States and Canadian border near Waddington, New York, extending through New York and Connecticut, crossing Long Island Sound, and terminating near South Commack, New York. Facilities proposed by Tennessee Gas Pipeline Company (Tennessee)^{3/} in the Iroquois/Tennessee Pipeline Project involve the construction of 46.6 miles of mainline loop, 13.9 miles of lateral loops and replacement pipe, 2.3 miles of new pipeline extension, and an additional 8,650 hp of compression on existing mainline systems in the States of New Hampshire, New York, Rhode Island, Connecticut, and Massachusetts. Tennessee would transport the natural gas to the pipeline facilities of Bay State near Monson, Massachusetts, for ultimate delivery to the cogeneration facility. To serve

the cogeneration facility, Bay State would be required to construct a two to five-mile extension of a 19-mile natural gas distribution main that it is planning to build for reasons unrelated to this import project. By mutual agreement between the parties, the proposed import may take place at the international border at the interconnect between the pipeline systems of TransCanada and Tennessee near Niagara, Ontario, and Highwater, Quebec, using existing facilities or through North Troy, Vermont, where the Portland Pipe Line, which Granite State leases, connects with a Canadian pipeline.

A notice of the application was issued on March 30, 1990, inviting protests, motions to intervene, notices of intervention, and comments to be filed by May 10, 1990.^{4/} An intervention in support of the application was filed by ProGas Limited. This order grants intervention to the movant.

II. Decision

The application of Orchard 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."^{5/} In making its section 3 determination DOE is guided by its natural gas import policy guidelines,^{6/} 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 natural 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 in response to changing market conditions. Orchard's uncontested import proposal, as set forth in its application, is consistent with the policy guidelines. The purchase contract contains make-up provisions and, in addition, provides contract parties with options for re-marketing natural gas under special marketing agreements and the release agreement between MASSPOWER and Granite State. The contract provides for price adjustments based on the price of competing fossil fuels purchased for electricity generation and thereby ensures the price of the natural gas will remain market-responsive. In addition, the purchase agreement provides for renegotiation of the commodity charge adjustment and, if necessary, arbitration to determine a market-responsive price. These procedures may be invoked by either party any time competitive conditions warrant their use.

Need for natural gas is viewed under the DOE guidelines as a function of marketability and natural gas is presumed to be needed if it is competitive. The proposed volumes of natural gas to be imported by Orchard would be used to fuel MASSPOWER's cogeneration facility for a 15-year term. We find Orchard's proposed import arrangement to be competitive and, therefore, needed.

Orchard has stated in its application that data provided by ProGas indicate that it has under contract with producers in the Province of Alberta sufficient quantities of natural gas to meet its previously existing commitments for export, domestic requirements, and proposed exports including volumes to be purchased by Orchard. Current estimates place the Province of Alberta reserves from conventional producing areas at 60.8 Tcf and total proven Canadian reserves from conventional producing areas at 72 Tcf. Potential marketable reserves from conventional producing areas are estimated at 199 Tcf, and in all of Canada, 213 Tcf. Under Orchard's contract with ProGas, full deliveries would total .137 Tcf. DOE finds that security of supply has been established and that the import will not lead to any undue dependence on an unreliable source of supply, nor otherwise compromise the energy security of the Nation over the contract period.

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)^{7/} DOE participated as a cooperating agency during the preparation of, and has adopted, the Iroquois/Tennessee Phase I Pipeline Project Final Environmental Impact Statement (FEIS) issued by the Federal Energy Regulatory Commission (FERC)^{8/} The FEIS examined the environmental effects of constructing and operating the Iroquois/Tennessee Project, including those facilities that would be used by Orchard to implement its proposed import arrangement. DOE has concluded that the Iroquois/Tennessee Project FEIS provides an adequate basis to evaluate the environmental aspects of the section 3 public interest determination concerning the import arrangement. DOE has used the FEIS, as well as conducting an independent review, in assessing the environmental consequences of granting the proposed import. DOE's findings are discussed in its consolidated Record of Decision (ROD) for the Iroquois/Tennessee Project facilities. The ROD is being issued in conjunction with this and other Orders related to Iroquois/Tennessee Project and is being published in the Federal Register.^{9/} 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 of the information in the record of this proceeding, I find that granting Orchard authority to import up to 25,000 Mcf per day of natural gas from Canada for a 15-year term beginning on November 1, 1991, is not inconsistent with the public interest and should be approved.

ORDER

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

A. Orchard Gas Corporation (Orchard) is authorized to import up to 25,000 Mcf of natural gas per day from ProGas Limited (ProGas), beginning on November 1, 1991, and continuing for 15 years, in accordance with the pricing and other provisions in Orchard's gas purchase agreement with ProGas, as described in Orchard's application and this Opinion and Order.

B. Within two weeks after deliveries begin, Orchard shall notify the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-SO, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in writing of the date of first delivery of natural gas authorized in Ordering Paragraph A.

C. With respect to Orchard's imports authorized by this Order, on behalf of MASSPOWER, or on behalf of Granite State or other party under the release gas agreement, Orchard shall file with the office of Fuels Programs within 30 days following each calendar quarter, quarterly reports showing separately for each party, by month, the quantities of natural gas in Mcf imported under this authorization, and the average price per MMBtu paid for those volumes at the international border. The price information shall include a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis.

D. With respect to the special marketing arrangement, Orchard shall file within 30 days following each calendar quarter, quarterly reports indicating whether such sales have taken place, and if so, giving by month, the total volumes of imports in Mcf and the average price for the imports per MMBtu at the international border. The report shall also provide the details of each import transaction, including the names of the purchaser(s), estimated or

actual duration of the agreements, transporter(s), points of entry, market(s) served and any demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis.

E. Orchard is authorized to import natural gas through the Iroquois/Tennessee import point; Niagara, New York; or North Troy, Vermont.

F. The motion to intervene, as set forth in this Opinion and Order, is hereby granted, provided that participation of the intervenor shall be limited to matters specifically set forth in its motion to intervene and not herein specifically denied, and that admission of such intervenor 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 November 15, 1990.

--Footnotes--

1/ NEPOOL is a large group of New England utilities. The monthly NEPOOL Fossil Fuel Index Price is the quotient of the total amount paid for the fossil fuel consumed by NEPOOL participants during a month and the total megawatts of electric power generated by NEPOOL fossil fuel units during the month.

2/ Federal Energy Regulatory Commission Docket No. CP89-634-000.

3/ Federal Energy Regulatory Commission Docket No. CP89-629-000.

4/ 55 FR 13306, April 10, 1990.

5/ 15 U.S.C. 717b.

6/ 49 FR 6684, February 22, 1984.

7/ 42 U.S.C. 4321, et seq.

8/ FERC EIS-0054, June 1, 1990 (DOE EIS-0152).

9/ The ROD 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).