Cited as "1 FE Para. 70,382"

Pan National Gas Sales, Inc. (FE Docket No. 89-77-NG), November 23, 1990.

DOE/FE Opinion and Order No. 453

Order Granting Authorization to Import Algerian Liquefied Natural Gas and Granting Intervention

I. Background

On November 1, 1989, Pan National Gas Sales, Inc. (Pan National), filed an application, as revised on February 12, 1990, 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 approximately 30.4 Bcf (30,400,000 MMBtu) per year of liquefied natural gas (LNG) from Algeria over a term of 15 years, plus an additional 40,000 MMBtu per day for the first five years. The proposed imports would be purchased from Sonatrading Amsterdam, B.V. (Sonatrading), a Netherlands company that is wholly owned by Sonatrach, Algeria's national oil and gas company, and resold to Citrus Trading Corp. (Citrus) pursuant to the November 1, 1988, gas purchase contract between Pan National and Citrus (gas purchase contract). Citrus would in turn sell the LNG to Florida Light and Power Company (FLP), an electric utility, for use in electric generation.

The proposed imports would be imported at Lake Charles, Louisiana, and regasified at the existing Lake Charles LNG facilities of Trunkline LNG Company (TLC). The regasified LNG would then be transported from Lake Charles by Trunkline Gas Company (Trunkline) and delivered to Florida Gas Transmission (FGT). FGT would then transport and deliver the proposed imports to FLP.

Pan National is a Delaware corporation with its principal place of business in Houston, Texas. Pan National, TLC, and Trunkline are all subsidiaries of Panhandle Eastern Corporation.

On December 23, 1988, in DOE/ERA Order No. 289 (Order 289),1/ the DOE authorized Pan National to import from Sonatrading up to 3.3 Tcf of Algerian LNG over a term of 20 years. Pursuant to that authorization, Pan National would market LNG to individual customers under contract terms responsive to current market conditions and Sonatrading would receive 63.24 percent of the sales price, F.O.B. Algeria. Under its purchase agreement with Sonatrading, Pan National is not subject to any minimum purchase requirement and must take only those LNG volumes that have been specifically contracted for by its

customers. These sales are subject to confirmation by Sonatrading prior to execution.

Consistent with the DOE "blanket" authorization program, Order 289 required that Pan National submit to the DOE separate applications for proposed sales contracts with terms of more than two years (although Pan National could begin such long-term imports under Order 289 while awaiting DOE's determination on the separate application). The current application was submitted pursuant to that requirement. The LNG would be sold by Pan National to Citrus under the terms of their gas purchase contract and the proceeds would be divided between Pan National and Sonatrading in accordance with the import arrangement authorized by Order 289.

Under the gas purchase contract, Pan National agreed to supply and Citrus agreed to purchase up to 30,400,000 MMBtu per year of regasified LNG over a 15-year term from the commencement of deliveries,2/ in addition to "optional volumes" of 40,000 MMBtu per day for the first five contract years. Citrus would purchase a base volume (not including the "optional volumes") of at least 64,000 MMBtu per day and not greater than 80,000 MMBtu per day. The daily base volume for each month would be nominated by Citrus on a quarterly basis. Citrus would be required to take at least 75 percent of the base volume per day and 98 percent of the base volumes per month. In addition, Citrus could purchase up to 125 percent of the daily base volume for a period not to exceed ten days in each month, however, in no event could the total annual purchases exceed 30.4 Bcf.

The monthly purchase price would be determined by a formula which is a function of the U.S. Gulf Coast price of No. 6 fuel oil, but would be subject to a floor price of $2.00 per MMBtu and a ceiling price of $4.00 per MMBtu, adjusted for inflation. If the formula price for any given month was less than the floor price, but more than $1.75, then Citrus would pay the floor price but the difference between the floor price and the formula price would be credited to a separate special account. Thereafter, whenever the formula price exceeded the $2.00 floor price, the price would be reduced by the amount the formula price exceeded $2.00 (but not more than $0.25 per MMBtu) and the separate account balance correspondingly reduced. If the special account at any time equaled or exceeded $2,000,000, Citrus could cease purchases of gas until such time as the formula price exceeded the floor price, unless Pan National was willing to sell the gas at the applicable formula price.

In addition, if the formula price at any time is less than $1.75 per MMBtu, then Pan National could elect to sell the gas at the formula price, or, absent such election by Pan National, Citrus could (1) continue to purchase at

the floor price (with $0.25 per MMBtu accruing in the special account), or (2) cease purchase of gas until the formula price is equal to or greater than $1.75 per MMBtu and the special account is less than $2,000,000.

The pricing provisions of the gas purchase contract could be renegotiated at the request of either party at the conclusion of the fifth and the tenth contract years. If the parties were unable to agree on new pricing provisions, the matter would be submitted for arbitration.

The gas purchase contract contains an indemnity provision which provides that if Pan National's LNG supply failed for an unexcused reason during the first three contract years, then Pan National would nevertheless have to supply all of Citrus' base volumes through the end of the third contract year. Also, during the fourth and fifth contract years (or during any succeeding two-year period, if Pan National's inability to deliver regasified LNG occurs at any time subsequent to the third contract year) Pan National would have to supply the base volumes up to a replacement cost limitation of $60,000,000. At the end of the two-year period, or at such time as the replacement cost limitation is reached, the contract would terminate.

A notice of the application was issued on March 29, 1990, inviting protests, motions to intervene, notices of intervention, and comments to be filed by May 4, 1990.3/ Statoil North America, Inc., filed a motion to intervene without comment. This order grants intervention to the movant.

II. Decision

The application of Pan National 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."4/ In making its section 3 determination the DOE is guided by its natural gas import policy guidelines,5/ 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.

The guidelines contemplate that contract arrangements should be sufficiently flexible to permit pricing and volume adjustments as required by market conditions. Pan National's uncontested import proposal, as set forth in its application, is consistent with the policy guidelines. Pan National and Citrus have freely negotiated a long-term gas purchase contract for firm supplies of natural gas. Under that contract, the purchase price would be

adjusted to ensure that the proposed gas imports would remain competitive with the price of No. 6 fuel oil, the principal competitor of natural gas for FLP's electric generation market. In addition, the volumes that Citrus would be required to take are flexible and there are contract renegotiation terms.

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 Pan National's proposed import arrangement is competitive and, therefore, can be presumed to be needed. Finally, as we concluded in Order 289, there is no basis for concluding that Sonatrach would be unable to supply the volumes of LNG that are contracted for, or that the imports of LNG would lead to undue dependence on an unreliable source of supply.

After taking into consideration all of the information in the record of this proceeding, I find that granting Pan National authority to import approximately 30.4 Bcf per year of Algerian LNG over a term of 15 years, plus an additional 40,000 MMBtu per day for the first five years, is not inconsistent with the public interest.6/

ORDER

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

A. Pan National Gas Sales, Inc. (Pan National), is authorized to import up to 30,400,000 MMBtu per year of Algerian liquefied natural gas (LNG) from Sonatrading Amsterdam B.V. (Sonatrading) for resale to Citrus Trading Corp. (Citrus) over a term of 15 years which began on September 1, 1990, in accordance with the Pan National/Citrus gas purchase contract described in the application and discussed in this Opinion and Order. Also, Pan National is authorized to import up to an additional "optional" 40,000 MMBtu per day of LNG from Sonatrading for resale to Citrus during the first five years of the gas purchase contract, in accordance with the terms of that contract and as discussed herein.

B. This LNG is to be imported at the Lake Charles, Louisiana, LNG regasification terminal of Trunkline LNG Company.

C. With respect to the LNG imports authorized by this Order, Pan National shall file with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-5O, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, within 30 days following each calendar quarter, quarterly reports

giving, by month, the total volumes of the imports in Mcf and the average selling price per MMBtu as well as Sonatrading's portion of that price. The reports shall also indicate if, during any month, Citrus was unable to purchase and receive, or Pan National was unable to sell and deliver, ninety-eight percent of the nominated volumes and/or any of the "optional" volumes of LNG, and, if so, what remedies were pursued by the non-defaulting party.

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 November 23, 1990.

--Footnotes--

1/ 1 ERA Para. 70,133.

2/ Pan National commenced deliveries to Citrus under the gas purchase agreement and pursuant to Order 289 on September 1, 1990.

3/ 55 FR 12543, April 4, 1990.

4/ 15 U.S.C. 717b.

5/ 49 FR 6684, February 22, 1984.

6/ Because the proposed importation of gas will use existing facilities, the DOE has determined that granting this application is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, et seq.) and therefore an environmental impact statement or environmental assessment is not required. See 40 CFR Sec. 1508.4 and 54 FR 12474 (March 27, 1989).