Cited as "1 FE Para. 70,387"

Northern Minnesota Utilities (FE Docket No. 90-59-NG), November 29, 1990.

DOE/FE Opinion and Order No. 459

Order Granting Authorization to Import Natural Gas from Canada

I. Background

On June 28, 1990, Northern Minnesota Utilities (NMU) filed an application, as amended on October 16, 1990, 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 10,000 Mcf of natural gas per day on a firm basis from Canada over a period beginning on November 1, 1990, and ending May 1, 2001. The proposed imports would be purchased from Western Gas Marketing Limited (WGML) and imported at the international boundary near Emerson, Manitoba.

NMU is an operating division of Utilicorp United, Inc., a Delaware corporation, authorized to do business in the State of Minnesota. NMU distributes natural gas in 44 towns in Minnesota.

NMU was authorized to import, pursuant to a gas purchase contract with TransCanada PipeLines Limited (TCPL), up to 5,000 Mcf per day of Canadian natural gas on a firm basis, and up to 10,000 Mcf per day on an interruptible basis, for a maximum of 15,000 Mcf per day during a term ending November 1, 1990. The authorization was issued on November 25, 1989, DOE/ERA Opinion and Order No. 207 (Order 207), in ERA Docket No. 87-31-NG.1/ Natural gas imported under Order 207 is transported in the U.S. by Great Lakes Transmission Company (Great Lakes).

NMU is in the process of negotiating a long-term gas purchase agreement with WGML, a subsidiary of TCPL, for the proposed imports. NMU included with its application a copy of a letter agreement, as amended by NMU's filing of October 16, 1990, between NMU and WGML that sets out the parameters of the gas purchase agreement to be negotiated.

In accordance with the terms of the letter agreement, as amended, WGML would supply NMU with a firm contract quantity of 10,000 Mcf per day over a term beginning on November 1, 1990, and ending May 1, 2001. The total contract firm quantities would be 36.5 Bcf of natural gas. The letter agreement also provides for WGML to supply NMU with up to 10,000 Mcf per day of interruptible overrun gas, but NMU stated in its application that overrun gas would be imported pursuant to NMU's blanket authorization to import up to 66.44 Bcf over a two-year period (DOE Opinion and Order No. 245).2/

The price to be paid for the gas would consist of a demand charge that would be the sum of the monthly demand toll per Mcf for firm transportation on TCPL's pipeline system and the demand charge for reservation of firm capacity on NOVA Corporation of Alberta's (NOVA) pipeline system. The price would also include a commodity charge, initially set at $1.82 per MMBtu, that would be subject to annual renegotiation and, if necessary, arbitration. The purpose of renegotiation and arbitration would be to achieve a gas price that would be competitive in NMU's market and comparable with the prices in other firm contracts for Canadian natural gas; use of the two-part, demand/commodity rate and the inclusion in the demand component of the as-billed TCPL and NOVA demand charges are not subject to renegotiation.

The letter agreement calls for the natural gas to be transported by NOVA and TCPL to the interconnection between the facilities of TCPL and Great Lakes and Viking Gas Transmission Company (Viking) at the international border near Emerson, Manitoba. Great Lakes and Viking would transport the gas to NMU.

A notice of the application was issued August 14, 1990, inviting protests, motions to intervene, notices of intervention, and comments to be filed by September 21, 1990.3/ No interventions or comments were received.

II. Decision

The application filed by NMU 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 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. 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 adjustments as required by market conditions. NMU's uncontested import proposal, as set forth in its application, is consistent with the policy guidelines. NMU has freely negotiated the parameters of a long-term gas purchase arrangement for firm supplies of natural gas under pricing provisions that are designed to achieve a gas price that is competitive with other sources of supply in NMU's market.

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 NMU's proposed import 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.

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).6/ Of the 10,000 Mcf per day of firm supplies of natural gas which NMU proposes to import, 5,000 Mcf would be transported over the existing pipeline facilities of either Great Lakes or Viking, while the remaining 5,000 Mcf would be transported using new facilities proposed to be constructed by Great Lakes.7/

The Federal Energy Regulatory Commission (FERC), in connection with an application by Great Lakes to construct and operate the 2.9 miles of pipeline looping and related facilities to provide the additional 5,000 Mcf per day of transportation service to NMU, conducted an Environmental Assessment (EA) on the proposed facilities. The DOE has reviewed the EA prepared by the FERC and adopted it as DOE/EA-0472. Based on the EA and an independent evaluation, DOE determined that the proposed facilities would not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA and, therefore, issued a Finding of No Significant Impact on November 19, 1990.8/

After taking into consideration all the information in the record of this proceeding, I find that granting NMU authority to import up to 10,000 Mcf per day of Canadian natural gas over a term beginning on the date of issuance of this order, and ending May 1, 2001, 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. Northern Minnesota Utilities (NMU), is authorized to import up to 10,000 Mcf per day of Canadian natural gas from Western Gas Marketing Limited (WGML) over a 10-year term beginning on the date of issuance of this order and ending May 1, 2001, in accordance with the gas purchase arrangement with WGML as described in the application and discussed in this Opinion and Order.

B. NMU shall notify the Office of Fuels Programs (OFP), Fossil Energy, FE-5O, 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. In addition, NMU shall file with the OFP the currently-being-negotiated gas purchase agreement between NMU and WGML to supply the natural gas authorized in Ordering Paragraph A above within two weeks of that agreement being signed.

C. NMU shall file with the OFP within 30 days following each calendar quarter, quarterly reports showing by month the total volume of the natural gas imports in Mcf, giving the average purchase price per MMBtu at the international border, and indicating whether NMU received the gas from Great Lakes Transmission Company or from Viking Gas Transmission Company. The monthly pricing information shall include a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis.

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

--Footnotes--

1/ 1 ERA Para. 70,737.

2/ 1 ERA Para. 70,780 (June 21, 1988).

3/ 55 FR 34316, August 22, 1990.

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

5/ 49 FR 6684, February 22, 1984.

6/ 42 U.S.C. 4321, et seq.

7/ To the extent that the proposed importation of gas will use existing facilities, the DOE has determined that granting this application is clearly not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA 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).

8/ NMU stated in its application that no new facilities would be required to transport the gas but subsequently informed the DOE of the need for the additional facilities on Great Lakes. Since the DOE has determined that construction of the proposed Great Lakes' facilities will have no significant environmental impacts, the DOE finds that it is not necessary to renotice NMU's application.