Cited as "1 FE Para. 70,394"

Megan-Racine Associates, Inc. (FE Docket No. 89-49-NG), December 20, 1990.

DOE/FE Opinion and Order No. 461

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

I. Background

On July 25, 1989, Megan-Racine Associates, Inc. (Megan-Racine), filed an application supplemented with additional information on October 12, 1989, and December 10, 1990, 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. Megan-Racine requested authorization to import up to 11,700 Mcf per day of Canadian natural gas over a 20-year term to fuel its new 49 Mw cogeneration plant in Canton, New York. The gas would be imported at the international boundary of the United States and Canada near Massena, New York.

Megan-Racine, a New York corporation with its principal place of business in Tampa, Florida, owns and will operate the new combined-cycle unit which the applicant expects to begin testing by January 15, 1991. The steam produced will be sold to a Kraft, Inc., plant and the electricity generated will be sold to Niagara Mohawk Power Corporation (Niagara Mohawk) under a 15-year power sales agreement dated November 1, 1987. The unit has been certified by the Federal Energy Regulatory Commission (FERC) as a "qualifying cogeneration facility" under the Public Utility Regulatory Policies Act of 1978. On October 11, 1989, Megan-Racine 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 (FUA).1/

Megan-Racine will purchase the gas from Western Gas Marketing Limited (Western Gas) pursuant to a precedent agreement enclosed as part of the application. The precedent agreement was executed on April 12, 1989, later amended in minor respects, and included a proposed gas purchase contract. The price Megan-Racine will pay Western Gas under the proposed contract is the sum of the monthly demand charge and the monthly commodity charge in effect for each month. The monthly demand charge is derived by multiplying the daily contract quantity (initially set at 11,700 Mcf) by a demand rate that is the sum of the monthly demand charges paid by Western Gas for transportation of

Megan-Racine's daily contract quantity on the pipeline systems of NOVA Corporation of Alberta (NOVA), TransCanada PipeLines, Ltd. (TransCanada), and Niagara Gas Transmission Ltd. (Niagara Gas), plus a supply reservation fee of $4.56 per Mcf per month.

The commodity charge is initially set at $1.45 per MMBtu delivered to the United States border and is to be adjusted quarterly pursuant to a formula that is based equally on the percentage change in Niagara Mohawk's average annual marginal avoided energy cost above or below a base cost of $0.25 per kilowatt-hour and the percentage change in CNG Transmission Corporation's (CNG) gas commodity component in its RQ Rate Schedule above or below a base cost of $2.41 per MMBtu. The agreement also provides for renegotiation of the pricing provisions prior to the start of the contract years commencing November 1, 1995, and November 1, 2000. If the parties are unable to reach agreement on a revised price formulation, the agreement provides for arbitration.

The proposed contract obligates Megan-Racine to take delivery of at least 60 percent of the annual contract quantity (defined as the daily contract quantity multiplied by the number of days in the year) but provides that deliveries below the 60 percent minimum level may be purchased by the applicant during the succeeding 12 month period. Megan-Racine must pay a deficiency charge levied on the volumes not taken below the minimum quantity equal to the average commodity charge in effect during the year. In addition, the amount that Western Gas is obligated to supply is subject to reduction if Megan-Racine takes less than minimum contract volumes.

Megan-Racine indicates that Western Gas would transport the natural gas through the pipeline facilities of NOVA and TransCanada in Canada to an existing interconnection with the pipeline facilities of Niagara Gas. The gas would then be transported on the Niagara system to an existing interconnection with the distribution system of St. Lawrence Gas Company, Inc. (St. Lawrence) at the international border of the United States and Canada near Massena, New York. St. Lawrence would deliver the gas to the applicant's cogeneration facility.

In support of its application, Megan-Racine states that all of the natural gas imported under its requested authorization would be used to fuel the new cogeneration facility. The applicant asserts that its arrangement with Western Gas is and would remain competitive over the term. Megan-Racine maintains that the arrangement would provide it with a wide degree of flexibility to vary its daily, monthly, and annual takes to conform to the operational characteristics of the cogeneration facility. Megan-Racine further

asserts that additional flexibility for both parties is enhanced by their opportunity to renegotiate pricing provisions in 1995 and 2000. With respect to the applicant's decision to select a Canadian supplier, Megan-Racine states that it contacted domestic gas suppliers, but was not able to find terms that were as competitive as those negotiated with Western Gas. Megan-Racine maintains that the proposed arrangement would provide reasonable assurances that a secure supply of natural gas will be available for purchase from Western Gas. For these reasons, Megan-Racine maintains that the proposed import is consistent with the public interest.

A notice of the application was issued November 8, 1989, inviting protests, motions to intervene, notices of intervention, and comments to be filed by December 18, 1989.2/ One motion to intervene was received from Western Gas in support of the project. This order grants intervention to Western Gas.

II. Decision

The application of Megan-Racine 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."3/ In making its section 3 determination DOE is guided by its natural gas import policy guidelines,4/ 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.

The guidelines contemplate that contract arrangements should be sufficiently flexible to permit pricing and volume adjustments as required by market conditions. Megan-Racine's uncontested import proposal, as set forth in its application, is consistent with the policy guidelines. Megan-Racine has freely negotiated a long-term gas purchase arrangement under contract provisions that provide for market-responsive pricing subject to quarterly and annual adjustments. Need for natural gas is viewed under DOE guidelines as a function of marketability and gas is presumed to be needed if it is competitive. We find that Megan-Racine's proposed import arrangement is competitive and, therefore, can be presumed to be needed.

The natural gas to be supplied by Western Gas will be produced from certain pools, fields and areas located within the Province of Alberta that are under contract to TransCanada. In light of TransCanada's historical and uncontested reliability as a supplier, and TransCanada's and Western Gas'

commitment to use reasonable best efforts to maintain sufficient gas reserves in its supply pool which are both economically viable and commercially producible for delivery to Megan-Racine, DOE finds that security of supply has been established.

After taking into consideration all the information in the record of this proceeding, I find that granting Megan-Racine authority to import up to 11,700 Mcf per day of Canadian natural gas over a term of 20 years commencing on the date of first delivery, in accordance with the gas purchase 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. Megan-Racine Associates, Inc. (Megan-Racine), is authorized, commencing on the date of first delivery, to import up to 11,700 Mcf per day of Canadian natural gas over a term of 20 years in accordance with its gas sales contract with Western Gas Marketing Limited (Western Gas), as described in Megan-Racine's application and this opinion.

B. Megan-Racine 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. Megan-Racine 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 the monthly and per unit (MMBtu) demand/commodity/reservation charge breakdown of the price. Megan-Racine shall also indicate if it incurred any take-or-pay charges under the minimum take provisions of the Megan-Racine/Western Gas contract.

D. Megan-Racine shall file with the OFP the final gas purchase contract between itself and Western Gas within two weeks after the signature of both parties.

E. 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 December 20, 1990.

--Footnotes--

1/ 10 U.S.C. 3801, et seq., as amended; 53 FR 35544, September 14, 1988.

2/ 54 FR 47818, November 17, 1989.

3/ 15 U.S.C. 717b.

4/ 49 FR 6684, February 22, 1984.