

Cited as "1 FE Para. 70,397"

Goetz Energy Corp. (FE Docket No. 90-74-NG), December 28, 1990.

DOE/FE Opinion and Order No. 467

Conditional Order Granting Long-Term Authorization to Export and Import Natural Gas to and from Canada and Granting Interventions

I. Background

On August 24, 1990, as amended on September 28, 1990, Goetz Energy Corp. (Goetz) filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA), for authorization to export to Canada at St. Clair, Michigan, up to 25,000 Mcf per day of natural gas plus such additional gas as may be required for fuel use, and to import from Canada at Grand Island, New York, up to 25,000 Mcf per day of natural gas over a fifteen year period. Goetz anticipates purchasing the natural gas from southwestern U.S. producers under long-term contracts lasting five to fifteen years. The company intends to utilize firm transportation service on the proposed Empire State Pipeline, whose applications for construction currently are pending before the New York State Public Service Commission and the Federal Energy Regulatory Commission (FERC). Goetz has entered into or is negotiating agreements for firm transportation with ANR Pipeline Company (ANR), Great Lakes Transmission Company (Great Lakes), TransCanada Pipelines, and Union Gas Limited (Union).

Goetz, a New York company, is a marketer of natural gas and petroleum products to customers in a territory that includes Buffalo, Rochester, and Syracuse, New York. The company currently relies on CNG Transmission Corporation (CNG) to provide interruptible transportation for its customers behind interconnecting local distribution companies encompassing Rochester Gas and Electric Corporation, Niagara Mohawk Power Corporation, and certain customers of New York State Electric and Gas Corporation. Goetz also is dependent upon National Fuel Supply Corporation (NFSC) to provide interruptible transportation for its customers behind National Fuel Distribution Corporation (NFDC). Goetz is attempting to secure firm natural gas supplies and transportation in order to reduce its dependence on CNG and NFSC and to obtain alternative natural gas supplies and firm transportation at competitive prices and on favorable terms. The company maintains that this export/import arrangement will result in a total delivered cost of natural gas that, during the term of the arrangements, is competitive with existing and other sources of natural gas.

In support of its application, Goetz asserts that delivery of the subject natural gas will not deprive the United States or any region of the country of needed natural gas and will further the goal of providing additional volumes of natural gas to the northeastern United States.

A notice of this application was published in the Federal Register on October 16, 1990, inviting protests, motions to intervene, notices of intervention, and comments to be filed by November 15, 1990.^{1/} A motion to intervene and protest was filed by CNG. This order grants intervention to this movant.

In its protest, CNG questions "(1) whether the requested authorization is necessary to enhance the availability of gas to Goetz; (2) whether the transportation arrangement is pro-competitive and consistent with DOE's open access policies; and (3) whether domestic sources have been identified to serve Goetz."

II. Decision

The application filed by Goetz has been evaluated to determine if the proposed export/import transportation arrangement meets the public interest requirements of section 3 of the NGA. Under section 3, imports must be authorized unless there is a finding that they "will not be consistent with the public interest." ^{2/} The NGA thus establishes a presumption in favor of authorization and the burden is CNG's to persuade DOE that granting the application would not be consistent with the public interest.

A. General Policy Considerations

According to the application, the same gas would be exported and imported solely as part of a transportation arrangement; no domestic gas supplies would be sold or stored in Canada and the arrangement does not involve imports of Canadian gas for domestic consumption. For this reason, as emphasized in the October 16 notice of the Goetz application, the public interest inquiry conducted by DOE in this proceeding focuses on the impact of the transportation arrangement on the availability of gas in markets served by the proposed Empire State Pipeline and by the other pipelines that may be involved in this project.

Based on the record before it at this time, DOE/FE preliminarily finds that the Goetz' import/export transportation proposal is not inconsistent with the public interest. There is no record evidence that the proposed export/import arrangement would have any adverse effect on gas availability in

the markets served by the Empire State Pipeline, or any other pipeline that may be used under this project. The proposed export/import arrangement, together with the new pipeline facilities, should enhance the diversity, availability, and reliability of gas supplies to Goetz and its customers, by providing firm, rather than interruptible, transportation service.

CNG, in its protest, questioned whether the proposed transportation arrangement was pro-competitive and consistent with DOE's open-access policies. FE believes that the negotiating parties to the transportation arrangement are in the best position to assess whether it is a competitive arrangement. However, the question raised in CNG's protest is not relevant to this section 3 proceeding and does not support rejection of Goetz' application. While DOE strongly supports an open-access policy, specific implementation of such a policy must be evaluated on a case-by-case basis, and remains the responsibility of either the FERC or the respective state to implement, depending on whether it is an intrastate or interstate pipeline.

CNG's final question relates to the identification of domestic gas supplies to be exported and reimported under this proposed project. FE does not think that the identification of the domestic supplies to be transported under the proposed project is relevant to DOE's examination pursuant to section 3 of the NGA.

B. Environmental Determination

The National Environmental Policy Act of 1969 (NEPA) 3/ requires Federal agencies to give appropriate consideration to the environmental effects of their proposed actions. Goetz' export/import proposal requires the issuance of several permits and authorizations before the project can proceed, including FE's export/import authorization under section 3 of the NGA and FERC's authorizations related to the Empire Pipeline Project. FERC (Docket Nos. CP 90-316 and CP 90-317) has the lead in preparing the environmental analysis required to assess the impacts of the new facilities related to this import/export project. DOE is a cooperating agency in the environmental review process.

The approval of this export/import arrangement is therefore being conditioned on completion of the environmental review of the new facilities and DOE's responsibilities under NEPA. When this process is completed, FE will then reconsider this conditional order and issue an appropriate final opinion and order.

This conditional order makes preliminary findings and indicates to the

parties the FE's determination at this time on all but the environmental issue in this proceeding. All parties are advised that the issues addressed herein regarding the import/export exchange of natural gas will be reexamined at the time of the DOE's review of the FERC NEPA analysis. The results of that reexamination will be reflected in the final opinion and order.

C. Conclusion

After taking into consideration all of the information in the record of this proceeding, I find that granting Goetz conditional authority to export to Canada at St. Clair, Michigan, up to 25,000 Mcf per day of natural gas plus such additional gas as may be required for fuel use, and to import from Canada at Grand Island, New York, up to 25,000 Mcf per day of natural gas over a fifteen year period, 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. Subject to the condition in Ordering Paragraph B, Goetz Energy Corporation (Goetz) is authorized, commencing on the date of first delivery, to export to Canada at St. Clair, Michigan, up to 25,000 Mcf per day of natural gas plus such additional gas as may be required for fuel use, and to import from Canada at Grand Island, New York, up to 25,000 Mcf per day of natural gas over a fifteen year period, as described in the application and discussed in this Opinion and Order.

B. The authorization in Ordering Paragraph A is conditioned upon entry of a final opinion and order after review by the Department of Energy (DOE) of the environmental documentation being prepared by the Federal Energy Regulatory Commission (FERC) and the completion by the DOE of its National Environmental Policy Act (NEPA) responsibilities.

C. Goetz 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 exports and imports of natural gas Ordering Paragraph A above within two weeks after deliveries begin.

D. Goetz shall file with the Office of Fuels Programs, within 30 days following each calendar quarter, quarterly reports showing by month, the total volume of natural gas exports and imports in Mcf.

E. 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 the admission of this intervenor shall not be construed as recognition that it might be aggrieved because of any order issued in these proceedings.

F. The authorizations granted in Ordering Paragraph A are subject to the condition stated in Ordering Paragraph B, the resolution of which may result in further conditions being imposed in subsequent proceedings in this case. Goetz and the intervenor in this proceeding shall be bound by any Opinion and Order issued in subsequent proceedings.

Issued in Washington, D.C. December 28, 1990.

--Footnotes--

1/ 55 FR 41873, October 16, 1990.

2/ 15 U.S.C. Sec. 717b.

3/ 42 U.S.C. 4321, et seq.