

Cited as "1 FE Para. 70,505"

Brooklyn Union Gas Company, et al., Connecticut Natural Gas Corporation, N.Y. State Electric & Gas Corporation, Yankee Gas Services Company (DOE/ERA Docket Nos. 86-44-NG, 86-45-NG, 86-46-NG, 86-48-NG, 87-02-NG, DOE-FE Docket No. 91-11-NG), November 27, 1991.

DOE/FE Opinion and Order No. 368-E

Final Order Granting Long-Term Authorization to Import Natural Gas from Canada

I. Summary

On January 11, 1990, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued DOE/FE Opinion and Order No. 368 (Order 368) conditionally authorizing a group of Northeastern local distribution companies (LDC's) to import up to 397,100 Mcf per day of Canadian natural gas.^{1/} The authorizations were conditioned upon completion by DOE of a review of the environmental impacts of the construction and operation of the facilities proposed to import and transport the natural gas. The DOE subsequently completed its environmental review of the proposed facilities that will be used to transport the majority (362,100 Mcf per day) of the natural gas and granted final authorization in DOE/FE Opinion and Order Nos. 368-A (Order 368-A) ^{2/} and 425 (Order 425).^{3/}

DOE has now completed its environmental review of the facilities proposed to transport the remaining volumes and has reexamined the import arrangements in conjunction with that review. DOE has determined that these arrangements will provide additional, long-term, secure supplies of competitively priced gas needed in the Northeast, and are, therefore, not inconsistent with the public interest.

II. Background

The authorization requests consisted of five joint applications filed by the LDC's (the Repurchasers) to import up to a combined total of 397,100 Mcf per day of natural gas from Canada. The joint applications, filed in Economic Regulatory Administration (ERA) Docket Nos. 86-44-NG, 86-45-NG, 86-46-NG and 86-48-NG, and 87-02-NG, were consolidated and collectively referred to as Brooklyn Union Gas Company, et al. (Brooklyn Union), after the lead applicant in each docket.^{4/}

Each of the applications called for the natural gas to be exported from Canada and sold to the Repurchasers by Alberta Northeast Gas, Ltd. (ANE), a Canadian corporation established by the Repurchasers. The natural gas would be purchased by ANE from various Canadian suppliers.

The applications stated that the majority of the proposed imports (387,100 Mcf per day) would be imported at the yet to be established import point of the Iroquois Gas Transmission System (Iroquois) on the international border near Iroquois, Ontario. One of the applicants, National Fuel Gas Supply Corporation (National Fuel), proposed to import its 10,000 Mcf per day portion of the Brooklyn Union volumes at Tennessee Gas Transmission System's (Tennessee) existing Niagara import point.

The initial four joint applications were filed on August 1, 1986. The

fifth application and the first amendments to the applications were filed January 14, 1989. Subsequent amendments were filed on May 22, 1987, and February 21, 1989. Federal Register notices granting an opportunity to intervene in, and/or comment on, the Brooklyn Union applications were issued in response to each application and amendment.^{5/}

After conducting environmental reviews and reexamining its initial determination on the National Fuel volumes to be shipped on Tennessee and on 352,100 Mcf per day of the volumes to be shipped on Iroquois, DOE issued Orders 425 and 368-A, respectively, giving final authorization for those volumes. On January 16, 1991, DOE issued DOE/FE Opinion and Order No. 368-B, denying rehearing of Order 368-A.^{6/}

III. Decision

The Brooklyn Union applications pertaining to the remaining 35,000 Mcf per day have been evaluated to determine if the proposed import arrangements meet the public interest requirements of section 3 of the Natural Gas Act (NGA). Under section 3, an import must be authorized unless there has been a finding that the import "will not be consistent with the public interest." ^{7/} In making its section 3 determination the DOE is guided by its natural gas import policy guidelines,^{8/} 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. Environmental Aspects

1. Overview

Environmental concerns are an important element in DOE's public interest determination. In general, DOE considers environmental issues in the context of the National Environmental Policy Act (NEPA) of 1969.^{9/} These imports are part of the second phase of the Iroquois/Tennessee Pipeline Project, a proposal to construct and operate pipeline facilities, including the new 365-mile Iroquois system extending from the U.S./Canada border through eastern New York and western Connecticut and terminating on Long Island, New York. The entire project (Phase I and II), as proposed, would transport up to 575,900 Mcf per day of natural gas (primarily Canadian) on a firm basis to 17 local distribution companies, three cogeneration customers, and one electric generation customer in the northeastern United States. Iroquois would deliver part of the gas directly to certain customers and deliver the remaining volumes to Tennessee, Algonquin, and Texas Eastern Transmission Company for redelivery to the remaining Iroquois customers.

To build the facilities used to transport Canadian gas as the Iroquois/Tennessee Project sponsors propose, there must be approval from FERC. Under section 3 of the NGA, FERC has jurisdiction over the siting, construction, and maintenance of pipeline facilities that cross the international border from Canada and enter the United States. In addition, under section 7 of the NGA, FERC is responsible for determining that interstate natural gas transportation facilities are in the public interest. If FERC determines that the border-crossing facilities would not be inconsistent with the public interest and there is or will be a need for a proposed service, it will issue a Presidential Permit and a Certificate of Public Convenience and Necessity authorizing the construction and operation of

a proposed project.

As the lead Federal agency for the Iroquois/Tennessee Project, FERC was responsible for developing information and preparing the relevant documents to identify the potential environmental impacts from the project in compliance with NEPA and the Council on Environmental Quality regulations for implementing NEPA (40 CFR Parts 1500-1508). FERC divided the Iroquois/Tennessee Project into two phases by an order issued July 30, 1990.10/ Phase I involved construction and operation of virtually all of the Iroquois pipeline system (except an interconnection with Algonquin) to provide transportation for up to 422,900 Mcf per day of gas. That phase also involved construction of 63 miles of pipeline facilities by Tennessee. Phase II involves the construction of pipeline, compression, and metering facilities by Iroquois, Tennessee, and Algonquin that would be used to transport and deliver up to 153,000 Mcf per day of Canadian gas for Brooklyn Union and other importers.

On November 14, 1990, FERC issued a Presidential Permit to Iroquois and certificated the Phase I facilities.11/ DOE issued final authorization for importation of the Phase I volumes, including those associated with the Brooklyn Union import arrangements, on November 15, 1990.12/ The potential environmental effects of the Phase I facilities were addressed in a final Environmental Impact Statement (EIS) issued by FERC on June 1, 1990, (which was adopted as DOE/EIS-0152). They were also discussed in DOE's Record of Decision for granting the Canadian gas import applications related to Phase I.13/ DOE concluded that the anticipated overall physical impacts of the proposed Phase I facilities on the natural environment would be relatively minor and could be mitigated. Construction of the Iroquois mainline is nearly completed and it will soon be placed in operation.

In September 1991, FERC issued an Environmental Assessment (EA) for Phase II (which was adopted as DOE/EA-0592). The Phase II facilities consist of 25.4 miles of pipeline loop, 21.3 miles of replacement pipeline, 3.6 miles of new lateral, 19,500 horsepower of compression (including two new compressor stations), and various metering facilities to be constructed in Connecticut, Massachusetts, Rhode Island, and New York. On October 9, 1991, Phase II was certified by FERC.14/ The FERC certificate imposed environmental conditions outlined in the EA to minimize the impact associated with construction and operation of the proposed facilities. In addition, it prohibited construction of any Phase II facilities until Iroquois, Tennessee, and Algonquin file with FERC copies of final DOE import authorizations for all Canadian gas that would be delivered in Phase II. The Brooklyn Union volumes associated with Phase II involve the importation by Connecticut Natural Gas Company of 15,000 Mcf per day, by Yankee Gas Services Company of 3,000 Mcf per day,15/ and by New York State Electric and Gas Corporation (NYSE&G) of 17,000 Mcf per day.16/

2. Impacts

The EA for Phase II of the Iroquois/Tennessee Project addressed: construction procedures for the proposed pipelines and aboveground facilities; erosion control and revegetation plans for the construction rights-of-way; impact on streams and wetlands, vegetation, wildlife, fisheries, threatened or endangered species, noise and air quality, land use, public lands (including the Appalachian National Scenic Trail), state forests and state wildlife management areas, residential areas, and cultural resources; polychlorinated biphenyls; and alternatives to the proposed pipeline routes and new aboveground facility sites. In addition, the document recommended that FERC

include 24 environmental mitigation measures in any certificate issued to Tennessee and Algonquin. The EA concluded that if constructed in accordance with the recommended mitigation measures, the proposed Iroquois/Tennessee Phase II Project would not be a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and would therefore not require the preparation of an EIS.

Inasmuch as the information and analysis in the EA determined that construction of the facilities for Phase II of the Iroquois/Tennessee Project would not result in significant long-term or cumulative environmental impacts, DOE believes that the Brooklyn Union import proposals associated with Phase II do not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA. Therefore, no environmental impact statement is required and DOE issued a finding of no significant impact (FONSI) on November 26, 1991.^{17/}

B. General Policy Consideration

The DOE natural gas import policy guidelines state that the terms and conditions of an import arrangement, taken together, must provide a supply of gas that the importer can market competitively over the term of the contract. They contemplate that the contract arrangements should be sufficiently flexible to permit pricing and volume adjustments as required by market conditions and availability of competing fuels, including domestic natural gas.

Order 368 preliminarily found that, under the Brooklyn Union import proposals, the Canadian gas would be imported and sold directly to the Repurchasers under gas purchase agreements containing several provisions that provide flexibility with respect to both volume and price, thus assuring that the gas supply can be marketed competitively over the term of the purchase contracts. Specifically, the gas purchase agreements contain no take-or-pay requirements, provide for price adjustments based on the price of alternative fuels in the markets to be served by the imported gas, and provide for yearly renegotiation and arbitration of the quantity and pricing provisions. The gas purchase agreements also contain provisions that allow ANE to offer volumes not taken by one Repurchaser to another Repurchaser, thus furthering the flexibility of the proposed arrangements. Order 368 preliminarily concluded, therefore, that the terms and conditions of the import arrangements, taken together, provide competitively priced supplies of gas over the terms of the contracts.

Under DOE import guidelines, need for proposed imports is viewed as a function of marketability and gas is presumed to be needed if it is found to be competitive. Order 368 preliminarily found that the proposed import arrangements are competitive. The gas purchase agreements were freely negotiated between the buyers and the sellers and contain market-responsive, flexible pricing terms, renegotiation and arbitration clauses, and do not have any minimum take provisions. Accordingly, the proposed imports are presumed to be needed.

Finally, the preliminary finding of Order 368 was that 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 future reliability as a supplier of natural gas to this country. In addition, the DOE noted that the Northeast has traditionally been at the end of the domestic pipeline distribution system and that the proposed import arrangements would enhance energy security in the region by adding to the

diversity of energy sources.

IV. Conclusion

After examining the entire record of this proceeding, including the Iroquois Phase II EA, I find that there is no information that would provide a basis for altering DOE's position in Order 368 that the proposed import arrangements are not inconsistent with the public interest within the meaning of section 3 of the NGA. Accordingly, this opinion and order grants the Brooklyn applicants final authorization to import the Iroquois Phase II volumes.^{18/}

ORDER

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

A. The applicants in the consolidated Brooklyn Union Gas Company, et al. dockets (ERA Docket Nos. 86-44-NG, 86-45-NG, 86-46-NG, 86-48-NG, 87-02-NG and FE Docket No. 91-11-NG) are authorized to import Canadian natural gas using the Iroquois/Tennessee Phase II Project facilities as discussed in this opinion and order.

B. The natural gas imports authorized in Ordering Paragraph A above are to be imported in accordance with the pricing and other provisions of the gas sales agreements contained in the consolidated applications and discussed in DOE/FE Opinion and Order No. 368, as amended.

C. DOE/FE Opinion and Order No. 368, Ordering Paragraph M, is hereby amended by adding the following: If no imports have been made, a report of "no activity" for that calendar quarter must be filed. Failure to file quarterly reports may result in termination of this authorization. The first quarterly report required by this order is due not later than January 30, 1992, and should cover the period from the date of this order until the end of the current calendar quarter December 31, 1991.

Issued in Washington, D.C., on November 27, 1991.

--Footnotes--

1/ 1 FE Para. 70,285.

2/ 1 FE Para. 70,370 (November 15, 1990).

3/ 1 FE Para. 70,353 (September 29, 1990).

4/ On January 6, 1989, the authority to regulate natural gas imports and exports was transferred from the ERA to the Assistant Secretary of Fossil Energy. DOE Delegation Order No. 0204-127 specifies the transferred functions (54 FR 11436, March 20, 1989).

5/ See Order 368, supra note 1.

6/ 1 FE Para. 70,400.

7/ 15 U.S.C. Sec. 717b.

8/ 49 FR 6684, February 22, 1984.

9/ 42 U.S.C. 4321, et seq.

10/ Iroquois Gas Transmission System, L.P., 52 FERC Para. 61,091.

11/ Opinion No. 357, 53 FERC Para. 61,194; Opinion No. 357-A, rehearing denied in part and granted in part, 54 FERC Para. 61,103 (February 4, 1991).

12/ See Brooklyn Union Gas Company, et al., 1 FE Para. 70,370 (November 15, 1990), rehearing denied, 1 FE Para. 70,400 (January 16, 1991); Orchard Gas Corporation, 1 FE Para. 70,374 (November 15, 1990); Selkirk Cogen Partners, L.P., 1 FE Para. 70,375 (November 15, 1990); Pawtucket Power Associates, 1 FE Para. 70,376 (November 15, 1990); and Granite State Gas Transmission, Inc., 1 FE Para. 70,377 (November 15, 1990).

13/ See 55 FR 48685, November 21, 1990.

14/ See Iroquois Gas Transmission System, L.P.; Tennessee Gas Pipeline Company; and Algonquin Gas Transmission Company, 57 FERC Para. 61,047.

15/ On March 18, 1991, Brooklyn Union import volumes approved for delivery to Connecticut Light and Power Company were transferred to Yankee Gas Services Company in DOE/FE Opinion and Order 368-C (1 FE Para. 70,426).

16/ In a letter dated November 21, 1991, Brooklyn Union stated that NYSE&G had made arrangements to have 6,000 Mcf per day of their ANE imports delivered on Phase I facilities and requested that DOE issue an order authorizing the importation of these volumes in order to allow NYSE&G to begin taking delivery by December 1, 1991. The issuance of this order completes DOE's environmental review of the integrated Iroquois/Tennessee project and in conjunction with Orders 368-A and 425, gives final authorization to the Brooklyn Union Repurchasers. Therefore, it is not necessary to act on NYSE&G's request.

17/ The FONSI is available in the Office of Fuels Programs public file associated with this proceeding.

18/ In conjunction with this order, DOE is also issuing final authorization to New England Power Company (FE Docket No. 90-09-NG), Granite State Gas Transmission, Inc., (FE Docket No. 90-23-NG), and Boston Gas Company (FE Docket No. 89-38-NG) for importation of the remaining 118,000 Mcf per day of the 153,000 Mcf per day Phase II volumes.