

Cited as "1 FE Para. 70,429"

Power City Partners, L.P. (FE Docket No. 90-33-NG), March 20, 1991.

DOE/FE Opinion and Order No. 486

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

I. Background

On April 27, 1990, Power City Partners, L.P. (Power City) 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) and DOE Delegation Order Nos. 0204-111 and 0204-127 requesting authorization to import from Canada up to 21,000 Mcf per day and up to a total of 111.3 Bcf of natural gas over a maximum period of 16 years and three months, commencing approximately August 1, 1992, and ending no later than October 31, 2008.1/ Power City would use the gas to fuel a 79 megawatt cogeneration facility which it plans to build at an Aluminum Company of America (ALCOA) plant in Massena, New York. The target date for commercial operation of the cogeneration facility is August 1, 1992.2/ The electrical output would be sold to Niagara Mowhawk Power Corporation (Niagara Mowhawk) and the steam would be sold to ALCOA. Power City also requested a two-year blanket authorization to enable it to market to other purchasers in the U.S. any gas which, from time to time, the cogeneration facility is unable to use.

This gas would be imported into the U.S. at an existing interconnection between the pipeline systems of Niagara Gas Transmission Limited (NGTL) and St. Lawrence Gas Company (St. Lawrence) near Cornwall, Ontario and Massena, New York, and transported by St. Lawrence to the cogeneration facility. Only minor new pipeline construction would be required for this delivery. St. Lawrence would build a short (approximately 1,100 feet) lateral pipeline from its mainline to a new meter and regulating station on ALCOA's property. Power City would build a separate two-mile segment of pipeline between its cogeneration facility and the proposed meter station.

Power City has contracted to buy the gas from Husky Oil Operations Ltd. (Husky) and its affiliate Canterra Energy Ltd. (Canterra). Both of these companies are wholly owned subsidiaries of Husky Oil Ltd. The gas purchase contract dated February 15, 1990, provides for the delivery and sale of a maximum daily quantity (MDQ) of 20,000 Mcf.3/ Firm deliveries are expected to commence between August 1, 1992, and November 1, 1992. The term of the contract is for 15 years if deliveries commence on November 1st, or for 15 years plus the time from the commencement date to the next November 1st, if deliveries commence on some date other than November 1st.

If deliveries of gas have not begun by November 1, 1992, the contract would terminate unless Power City requests an extension. Deliveries must begin by November 1, 1993, at the latest, in the event of an extension. If Power City elected to exercise its extension period option it would be obligated to take or nevertheless pay for 16,000 Mcf per day (80 percent of the MDQ) during the extension period. We note that Power City would be excused from this take-or-pay obligation by giving Husky and Canterra timely notice that firm deliveries would commence on or before November 1, 1993. We also note that Power City's request for blanket authorization to sell the proposed imports to other United States consumers is based on the possibility that it may elect to

obligate itself to taking gas prior to the completion of the cogeneration facility, as well as to mitigate demand and reservation charges.

The price for the natural gas, which is set on an annual basis, would be divided into a transportation charge and a commodity charge. The transportation charge would consist of the transportation costs in Canada from the seller's production areas to the interconnect point near Cornwell, Ontario. The base commodity charge during 1991 is \$1.65 per MMBtu.⁴ For each year thereafter the commodity charge would be determined on the basis of an index tied to changes in (1) the Alberta Wellhead Price (calculated from Consumers' Gas large volume gas sales price in Toronto net of TransCanada Pipelines Limited and Nova Corporation of Alberta transportation tolls and fuel costs); and (2) a U.S. domestic wellhead price (calculated from a published sales rate of Niagara Mowhawk to large industrial customers net of firm transportation rates by CNG Transmission Corporation and Niagara Mowhawk and fuel costs). The Alberta Wellhead Price would be given a 70 percent weight and the domestic wellhead price a 30 percent weight. Including transportation charges in Canada and the base commodity rate of \$1.65, Power City estimated a total border price of \$2.71 as of January 1, 1991.

In addition, the contract contains a floor commodity charge, a first ceiling commodity charge (to aid in determining the seller's priority to payment out of the cogeneration plant's monthly revenue) and a second commodity ceiling charge in each year. The 1992 floor commodity charge is set at \$1.60 and rises to \$4.19 in 2008. The first ceiling commodity charge starts at \$1.91 in 1992 and rises to \$7.25 by 2008, and the second ceiling commodity charge starts at \$1.91 and rises to \$7.59.

If Power City takes less than 16,000 Mcf per day on average over two consecutive contract years, or over the last year of the contract, it would be obligated to pay a reservation charge equal to 20 percent of the floor commodity charge applied to deficiency volumes below the minimum take level. This reservation charge, intended to function as a gas inventory charge, is set at a level that would compensate Husky and Canterra for standing ready to serve Power City. During any two-year period, total reservation charges would be limited to \$500,000 and \$250,000 over the last contract year. The contract also stipulates that Power City shall not take less than the minimum take level from Husky and Canterra if the reason is because Power City has access to gas supplies from third parties.

The contract contains warranty provisions which seek to ensure the continued firm flow of Power City's gas requirements and requires the seller to compensate Power City for additional costs incurred if it became necessary to obtain alternative supplies.

Finally, there is provision for amendment to the contract upon mutual consent of the parties. If there is not mutual agreement, any dispute could be resolved under the arbitration provisions of the contract.

In support of its application, Power City states that it has freely negotiated the purchase agreement with its Canadian suppliers and that the proposed imports would provide a supply of natural gas designed to meet the needs of the cogeneration facility under terms and conditions necessary to ensure the successful operation of that facility over the life of the purchase agreement. Power City also states that no domestic gas supplies are delivered into the area where the cogeneration facility is to be located. Moreover, Power City asserts that Canada has been an historically reliable source of

natural gas and that the Canadian suppliers are substantial gas producers with combined proven and probable natural gas reserves of 1.9 Tcf.

DOE published a notice of receipt of Power City's application in the Federal Register on July 12, 1990,^{5/} inviting protests, motions to intervene, notices of intervention, and comments to be filed by August 13, 1990. No motions or notices to intervene nor protests to the granting of the application were filed.

II. Decision

A. General Considerations

The application filed by Power City 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."^{6/} This determination is guided by DOE's natural gas import policy guidelines, under which the competitiveness of the import in the markets served is the primary consideration for meeting the public interest test.^{7/} DOE also considers, particularly in long-term arrangements, need for and security of the imported gas supply. Further, the National Environmental Policy Act of 1969 (NEPA)^{8/} requires DOE to examine the environmental effects of gas import authorizations.

The DOE guidelines state that the competitiveness of an import arrangement will be assessed by a consideration of the whole fabric of the arrangement. They contemplate that the contract provisions should be sufficiently flexible to permit pricing and volume adjustments as required by market conditions and availability of competing alternative fuels, including domestic natural gas.

Power City's uncontested import proposal, as a whole, is competitive. In conformity with DOE's market-oriented policy, the index mechanism in the gas contract would permit the import price to respond to changing market conditions. Although explicit provision for renegotiation and arbitration of the pricing terms is not present in the contract, price renegotiations and arbitration are possible under other sections of the contract.

Need for the gas is viewed under the guidelines as a function of marketability and gas is presumed to be needed if it is competitive. We have found on the basis of the record before us at this time that Power City's proposed import arrangement is competitive and, therefore, can be presumed to be needed.

Finally, the security of this Canadian gas supply has not been disputed. Natural gas has been imported from Canada for many years and there has been no instance of a major supply interruption that would call into question Husky and Canterra's reliability as gas suppliers to this country. The application contained a list of the fields in the provinces of British Columbia and Saskatchewan from which they intend to provide the required volumes for the proposed import by Power City. Their estimate of the remaining marketable gas reserves in these areas is approximately 134 Bcf. Reliability of the Canadian supplies is further supported by the contractual warranty obligations, under which Husky and Canterra must deliver the daily firm contract quantities or suffer the penalty of having to reimburse Power City for any additional costs incurred in obtaining alternate supplies of gas to replace the delivery

shortfall. Accordingly, DOE preliminarily finds that this import will not lead to any undue dependence on an unreliable source of supply nor otherwise compromise the energy security of the nation over the term of the proposed import.

B. Environmental Analysis

DOE will prepare an environmental assessment (EA) on the proposed delivery pipeline and meter station to be constructed by St. Lawrence and Power City to serve the Massena cogeneration facility. A final decision on Power City's application cannot be made until the environmental review has been completed and its results are available for FE's consideration. A final order upon completion of the EA will address all environmental aspects of the application.

This conditional order makes preliminary findings and indicates FE's determination at this time on all but the environmental matters in this proceeding. The issues addressed herein regarding the import of natural gas will be reexamined at the time the environmental review is completed. 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 the authorization requested by Power City to import up to 21,000 Mcf per day and up to a total of 111.3 Bcf of natural gas is not inconsistent with the public interest within the meaning of the NGA and should be granted. This approval is conditioned upon issuance of a final DOE/FE order after preparation of the EA and DOE's completion of its NEPA responsibilities. The term of the authorization would be from when this gas is first delivered to Power City through October 31, 2007, unless deliveries begin after November 1, 1992, in which case the term will run through October 31, 2008.

Power City requested a two-year blanket authorization to market natural gas not used in the cogeneration facility to other purchasers in the United States. DOE's blanket authorization program provides an authorization holder with approval, within prescribed limits, to negotiate and transact individual, spot and short-term import arrangements without further regulatory action. In this case, Power City has a long-term contract with a Canadian seller for specific volumes of firm gas supplies using an indexed pricing formula. Power City contemplates using the natural gas in the cogeneration facility but may resell the gas to other domestic customers in order to reduce its liability. Power City's request is fundamentally different from a blanket authorization request because the importer is known, the exporter is known, the import point is known, the volumes are known, and the pricing provisions are known. Therefore, DOE is issuing this conditional order authorizing Power City to import natural gas under the gas purchase contract executed with Husky and Canterra regardless of whether the gas would be used in the cogeneration facility or resold by Power City to other domestic purchasers.

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, Power City

Partners, L.P. (Power City) is authorized to import at Massena, New York, up to 21,000 Mcf per day and up to a total of 111.3 Bcf of natural gas from Canada in accordance with the provisions of its February 15, 1990, gas purchase agreement with Husky Oil Operations Ltd. and Canterra Energy Ltd, 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 of the environmental assessment being prepared in this proceeding and the completion by DOE of its National Environmental Policy Act (NEPA) responsibilities.

C. The term of this authorization shall be from the date of the first delivery through October 31, 2007, except that, if imports begin after November 1, 1992, the term will end October 31, 2008.

D. Power City 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 deliveries of natural gas imported under Ordering Paragraph A above within two weeks after deliveries begin.

E. With respect to the imports authorized by this Opinion and Order, Power City shall file with OFP, within 30 days following each calendar quarter, quarterly reports showing by month, the total volume of natural gas imports in Mcf and the average purchase price per MMBtu at the international border. The price information shall itemize separately the demand, commodity, and reservation charges on a monthly and per unit (MMBtu) basis. The reports shall also provide the names of the buyers, market area, volumes, resale price per MMBtu, and if applicable, the per unit demand/commodity charge breakdown for gas resold by Power City to third parties.

F. The authorization granted in Ordering Paragraph A is 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. Power City shall be bound by any Opinion and Order issued in subsequent proceedings.

Issued in Washington, D.C., March 20, 1991.

--Footnotes--

1/ Power City is a limited partnership under the laws of the State of Delaware. Power City Generating, Inc., a New York corporation, is the general partner. Sundance Energy, Ltd., a New York corporation, and Energy Factors, Inc., a Delaware corporation, are the limited partners.

2/ The cogeneration plant will be operated as a "qualifying facility" as defined in the Public Utility Regulatory Policies Act of 1978. In addition, Power City has filed a Certification of Compliance (54 FR 23258, May 31, 1989) with the coal capability requirement for proposed new electric powerplants pursuant to the Powerplant and Industrial Fuel Use Act of 1978, as amended.

3/ The daily import authorization request of 21,000 Mcf allows some tolerance to account for such items as transportation imbalances.

4/ References herein are to U.S. dollars.

5/ 55 F.R. 28680 (July 12, 1990).

6/ 15 U.S.C. 717b.

7/ 49 F.R. 6684, February 22, 1984.

8/ 42 U.S.C. 4321, et seq.