

Cited as "1 FE Para. 70,437"

Sumas Energy, Inc. (FE Docket No. 90-92-NG), March 28, 1991.

DOE/FE Opinion and Order No.494

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

I. Background

On October 25, 1990, Sumas Energy, Inc. (SEI), 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 import from Canada, on a firm basis, up to 5 Bcf of natural gas per year over a 20-year term commencing approximately October 1991. The proposed imports would be used as fuel in a new 56 megawatt (MW) electric cogenerating plant to be constructed and operated by SEI near Sumas, Washington. The gas would be delivered to the cogeneration facility by the proposed Sumas Pipeline-USA pipeline. The natural gas would be imported at the interconnection between Sumas Pipeline-USA and either Westcoast Energy, Inc. (Westcoast), or Sumas Pipeline-Canada, near Huntingdon, British Columbia.

SEI, a corporation organized under the laws of the State of Washington, intends to construct, own and operate a new-gas fired cogeneration facility near Sumas, Washington. The cogeneration facility is scheduled to have an electrical generating capacity of 56 MW. SEI has signed a 20-year contract to supply Puget Sound Power & Light Company (Puget Sound) 56 MW's of firm power beginning in November 1991. In addition, approximately 45,000 lbs/hr of low-pressure steam (37,000 lbs/hr from a boiler + 7,500 lbs/hr extracted from a condensing turbine) will be sold to SOCCO, INC. (SOCCO), which will own and operate a lumber kiln drying facility adjacent to the cogeneration facility. SOCCO is an affiliated company of SEI.

In order to fuel the proposed cogeneration facility, SEI requests authority to import from Canada up to 15,000 Mcf of natural gas per day and up to 5 Bcf per year over a 20-year term. The source of the gas will be a combination of gas produced from reserves owned by ENCO Resources Limited (ENCO), an affiliate of SEI, or gas purchased under long-term contracts from one or more non-affiliated Canadian suppliers (Contracted Gas). As of the date of the application ENCO had executed binding agreements with several Canadian companies for the purpose of purchasing proven gas reserves estimated at 64.9 Bcf. SEI states that it is unlikely that Contracted Gas will be required until the year 2001, when deliverability of ENCO's reserves may decline below SEI's requirements. SEI has not signed any agreements for Contracted Gas nor is it negotiating for or attempting to acquire any Contracted Gas. SEI asserts that any Contracted Gas purchases will be the result of arm's length negotiations.

SEI would notify FE in writing of the date of first delivery of natural gas imported under the requested authorization within two weeks of the date of such delivery. Also, SEI states that it would file quarterly reports detailing any transactions.

The draft of the proposed gas supply contract between SEI and ENCO does not specify a price because costs, such as transportation, processing, well operating costs and other costs are still being determined. However, SEI states that the contractual arrangement, whereby most of its gas requirements

will be provided by ENCO through the acquisition of natural gas reserves in the ground, will significantly reduce its cost of fuel relative to alternatives. For example: the acquisition cost of the proven reserves on the properties being acquired by ENCO will have a weighted average cost of \$0.2248 (US\$/Mcf); the cost of transportation and processing for the reserve from the wellhead to the burner tip will average approximately \$0.61 (US\$/Mcf); after including operating costs and developmental costs, ENCO will be able to deliver gas to SEI for an estimated \$1.20 (US\$/Mcf).

The gas will be transported from the wellhead to various natural gas processing plants owned and operated by Westcoast via gathering lines and raw gas lines that will be owned by Westcoast or ENCO. The gas produced by ENCO most likely will be processed by Westcoast's Taylor or Ft. Nelson processing plants. The gas will then be transported south via Westcoast's main transmission line to its Meter Station No. 16 at Huntingdon, British Columbia. SEI has applied to the National Energy Board of Canada for permission to construct approximately a 300 meter pipeline from Westcoast's Meter Station No. 16 to the Canada-US international boundary and approval is pending. SEI will construct the Sumas Pipeline-USA, approximately a 3.0 mile (4,900 meter) line from the international boundary to the cogeneration facility. SEI has applied to the appropriate Federal, state and local agencies for all necessary permits to construct both the cogeneration plant and the connecting pipeline. In addition, SEI has entered into right-of-way agreements with landowners for substantially all of the proposed pipeline route.

In support of its application, SEI states that the natural gas it seeks to import represents the best overall supply arrangement that could be secured on a long-term, firm supply basis. SEI further claims that for more than eight months it attempted to enter into a long-term contractual arrangement with a domestic or Canadian producer of natural gas to provide a firm supply of gas at a predetermined price for a period of at least ten years. No producer was willing to provide the required volumes of gas at a price that made SEI's proposed cogeneration project financially feasible. Therefore, SEI secured a long-term gas supply by purchasing proven gas reserves that could be used as required.

SEI maintains that the proposed imports are not inconsistent with the public interest as the terms and conditions of the agreement with ENCO will represent a secure long-term source of gas that is significantly more economical than alternative sources of gas, including gas from domestic suppliers.

On November 8, 1990, SEI filed a Certificate of Compliance with the coal capability requirement for proposed new electric powerplants, pursuant to the Powerplant and Industrial Fuel Use Act of 1978 (10 USC 3801 et. seq., as amended; 53 FR 35544, September 14, 1988).

A notice of this application was issued on December 28, 1990, inviting protests, motions to intervene, notices of intervention, and comments to be filed by February 4, 1991.1/

Two motions to intervene without substantive comments or requests for additional procedures were filed by Northwest Pipeline Corporation and by Westcoast Energy Inc. This order grants intervention to these movants.

II. Decision

The application filed by SEI has been evaluated to determine if the proposed import 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/} This determination is guided by the DOE's natural gas import policy guidelines.^{3/} Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test. In the case of long-term arrangements such as this, need for the gas supply and security of supply are also important considerations. In addition, the National Environmental Policy Act of 1969 (NEPA) ^{4/} requires DOE to consider the environmental effects of natural gas import arrangements.

The DOE guidelines state that the competitiveness of an import arrangement will be assessed by a consideration of the whole fabric of the arrangement. SEI's uncontested import proposal, as set forth in its application is consistent with the DOE policy guidelines. SEI's proposed import arrangement with ENCO was specifically designed to meet the long-term, firm supply needs of SEI's cogeneration project by purchasing proven gas reserves which could be produced as required. As stated in the application, SEI was not able to negotiate a supply arrangement with either domestic or Canadian natural gas producers that would meet its needs, and, therefore, the ENCO arrangement was decided upon.

Regarding Contracted Gas, SEI states that it is unlikely that Contracted Gas will be required until the year 2001 (10 years production) when deliverability of ENCO's reserves may decline below SEI's requirements. SEI has not signed any agreements for Contracted Gas nor is it negotiating for or attempting to acquire any Contracted Gas. Therefore, since SEI is not contemplating buying or negotiating for Contracted Gas for at least 10 years, DOE will condition the use of Contracted Gas by requiring that SEI submit the terms and conditions of any Contracted Gas agreements to FE at least 90 days prior to any purchases under such agreements. FE will then determine what, if any, additional procedures may be required.

Under the policy guidelines, a finding of competitiveness gives rise to a presumption of need. We have found that SEI's proposed import arrangement is competitive and, thus, can be presumed to be needed. Also, SEI's 20-year contract to supply Puget Sound with electricity will insure a long-term requirement for gas supplies.

Since SEI, through ENCO, has actually purchased natural gas reserves in the ground, the security of the supply is ensured. Furthermore, natural gas has been imported from Canada for many years, and there have been no instances of a major natural gas supply interruption that would call into question Canada's reliability as a supplier of natural gas to this country.

A. Environmental Considerations.

FERC was the lead agency in conducting an examination of the environmental effects of constructing the SEI project facilities and has completed their environmental assessment (EA).^{5/} The DOE will independently review the analysis and take the appropriate action to complete the DOE's NEPA responsibilities. The approval of this import of natural gas is therefore conditioned on completion of an environmental review and DOE's responsibilities under NEPA. Similarly, to the extent this order is conditional, the findings are preliminary and indicate to the parties FE's determination at this time on all but the environmental issues in this

proceeding. All parties are advised that the issues addressed herein regarding the import of natural gas using the proposed new facilities will be reexamined at the time of DOE's review of the FERC's NEPA analysis. The results of that reexamination will be reflected in the final opinion and order.

B. Conclusion

After taking into consideration all the information in the record of this proceeding, I find that granting SEI conditional authority to import from Canada, on a firm basis, up to 5 Bcf of natural gas per year over a 20-year term commencing approximately October 1991, to meet the supply requirements at its proposed 56 MW cogeneration facility near Sumas, Washington, 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. Subject to the conditions in Ordering Paragraphs B & C, Sumas Energy, Inc. (SEI), is authorized to import from Canada, on a firm basis, utilizing the proposed new Sumas Pipeline-USA facilities, up to 5 Bcf of natural gas per year over a 20-year term commencing approximately October 1991, to meet the supply requirements at its proposed cogeneration facility near Sumas, Washington.

B. To the extent SEI proposes to import Contracted Gas, as that term is defined in its application, the terms and conditions of Contracted Gas agreements must be submitted to the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in writing 90 days prior to any purchases under such agreements.

C. 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 prepared by the Federal Energy Regulatory Commission and the completion by the DOE of its NEPA responsibilities.

D. SEI shall notify the Office of Fuels Programs in writing of the date of initial delivery of natural gas imported under Ordering Paragraph A within two weeks after deliveries begin.

E. With respect to the imports authorized by this Opinion and Order, SEI shall file with the Office of Fuels Programs within 30 days following each calendar quarter, quarterly reports showing, by month, and by contract, including the name of the seller, the total volume of natural gas imports in Mcf and the average purchase price per MMBtu at the international border. The monthly pricing information shall include, if applicable, a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis.

F. The motions to intervene, as set forth in this Opinion and Order, are hereby granted, provided that participation of such intervenors shall be limited to matters specifically set forth in their motions to intervene and not herein specifically denied, and that the admission of such intervenors shall not be construed as recognition that they might be aggrieved because of any order issued in these proceedings.

G. The authorization granted in Ordering Paragraph A is subject to the conditions stated in Ordering Paragraph B & C, the resolutions of which may result in further conditions imposed in subsequent proceedings in this case. SEI and intervenors in this proceeding shall be bound by any Opinion and Order issued in such subsequent proceedings.

Issued in Washington, D.C. on March 28, 1991.

--Footnotes--

1/ 56 FR 428, January 4, 1991.

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

3/ 49 FR 6684, February 22, 1984.

4/ 42 U.S.C. 4321, et seq.

5/ Sumas Energy, Inc. Docket No. CP91-50-000, Attachment February 14, 1991.