

Cited as "1 FE Para. 70,443"

Encogen Four Partners, L.P. (FE Docket No. 90-11-NG), April 30, 1991.

DOE/FE Opinion and Order No. 499

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

I. Background

On February 26, 1990, as supplemented on December 18, 1990, Encogen Four Partners L.P. (Encogen) 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 for authorization to import up to 14,800 MMBtu of Canadian natural gas per day for a period of 15 years.^{1/} The gas would be used to fuel Encogen's new 62 megawatt (MW) cogeneration plant to be constructed and operated in Buffalo, New York. Encogen requests that the authorization commence upon the commercial operation of the project, which is expected to occur in November 1991.

Encogen is a Delaware limited partnership. The managing general partner of the applicant is EDC Four, Inc., which is a wholly owned subsidiary of Enserch Development Corporation.

The gas purchase contract submitted as part of the application provides for the purchase by Encogen from Sceptre Resources Limited (Sceptre) of a supply of natural gas to be used as fuel in the 62 MW gas-fired cogeneration plant to be built on a site located in Buffalo, New York. Encogen's cogeneration facility has been certified as a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978. Electricity produced by the cogeneration facility will be sold to Niagara Mohawk Power Corporation under a long-term power purchase agreement. Thermal energy produced by the facility will be sold to the American Brass Company under a long-term thermal sales agreement.

Sceptre is to arrange transportation of the gas through the facilities of Transgas PipeLines Limited (Transgas) within the Province of Saskatchewan and through the facilities of Nova Corporation of Alberta (Nova) within the Province of Alberta. Encogen is to reimburse Sceptre for all fees incurred in connection with this transportation except to the extent, if any, that the transportation charges on the Nova system exceed the transportation charges for which Encogen would be responsible had the gas delivered on the Nova System been delivered on the Transgas system, in which case Sceptre is responsible for any such excess. Title to the natural gas is to pass from Sceptre to Encogen at the point(s) at which the gas first enters the pipeline of TransCanada PipeLines Limited (TransCanada) either at any of its existing interconnections with Transgas, located at or near Success, Liebenenthal and Bayhurst in the Province of Saskatchewan, or at the point of its existing interconnection with Nova at or near Empress, Alberta, Canada. Encogen will bear the cost of transportation by TransCanada to a point of interconnection at the international border with the proposed facilities of Empire State Pipeline (Empire) located at Grand Island, New York. Encogen states that the transportation charge to be paid to TransCanada in U.S. dollars at the international border, given the current U.S./Canadian monetary exchange rate, will be approximately \$.89 per MMBtu. From there, transportation to the cogeneration facility would be provided by Empire, National Fuel Gas Supply

Corporation (National Fuel), and National Fuel Gas Distribution Corporation (NFG Distribution).^{2/}

On July 30, 1990, Encogen filed a Certification of Compliance with the coal capability requirement for proposed new electric powerplants pursuant to the Powerplant and Industrial Fuel Use Act of 1978.^{3/}

According to its application, Encogen will pay Sceptre \$1.65 per MMBtu in U.S. dollars for gas supply (exclusive of transportation charges) from the start-up date of the cogeneration plant to and including December 31, 1992. The price for all gas purchased from January 1, 1993, to and including June 30, 2009, would escalate at the beginning of each accounting period in accordance with a schedule set forth in the gas purchase contract. At the beginning of the last accounting period, the price of the gas would have escalated to \$6.26 per MMBtu. Under the contract, Encogen may nominate, on a daily basis, the amount of gas it wishes to purchase (from 0 to 14,800 MMBtu's per day), and that amount shall remain the standing nomination until it is changed. Encogen is required to take and pay for only the gas it nominates.

A notice of the application was issued August 9, 1990, inviting protests, motions to intervene, notices of intervention, and comments to be filed no later than September 14, 1990.^{4/} No comments were received.

II. Decision

The application of Encogen 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".^{5/} DOE is guided by its natural gas import policy guidelines,^{6/} under which the competitiveness of the import in the markets served is the primary consideration in meeting the public interest test. DOE also considers, particularly in long-term arrangements such as this, need for and the security of the gas supply. In addition, the National Environmental Policy Act of 1969 (NEPA) ^{7/} requires DOE to consider the environmental effects of natural gas import authorizations.

A. General Considerations

Encogen's uncontested import proposal, as set forth in its application, is consistent with the policy guidelines. Encogen has negotiated a long-term arrangement to meet the discrete requirements of its cogeneration plant. According to its application, Encogen has negotiated a gas purchase price with Sceptre that is and will remain competitive based on its revenues and expenses over the life of the cogeneration facility. In addition, the gas purchase contract does not obligate Encogen to take or pay for volumes not requested. Accordingly, on the basis of the record before the agency at this time, DOE preliminarily finds that the proposed long-term gas supply arrangement is competitive. This finding in turn gives rise to a presumption of need for the gas which is also supported by the fact that the proposed cogeneration plant will create new demand when it begins operations.

Finally, there is no dispute as to the security of the Canadian gas supply or the reliability of the Canadian gas supplier. Accordingly, on the basis of the record before it at this time, DOE finds that the Canadian gas supply is and will remain secure.

B. Environmental Determination

NEPA requires Federal agencies to give appropriate consideration to the environmental effects of their proposed actions. In addition to DOE's import authorization under section 3 of the NGA, Encogen's import proposal requires the issuance of several other major Federal permits and authorizations before the project can proceed, including FERC's authorization(s) related to Empire Pipeline Project. FERC has the lead in preparing the environmental analysis to assess the impacts of the new pipeline facilities related to Encogen's import project. DOE is a cooperating agency in the environmental review process.

Approval of Encogen's import arrangement is therefore being conditioned on completion of the environmental review of the proposed related 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 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 will be reexamined at the time of 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 the information in the record of this proceeding, I find that granting Encogen conditional authority to import up to 14,800 Mcf per day of Canadian natural gas over a period of fifteen years commencing upon commercial operation of Encogen's new cogeneration facility in accordance with the gas import arrangement described in the application, 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 condition in Ordering Paragraph B, Encogen Four Partners L.P. (Encogen) is authorized, commencing upon commercial operation of Encogen's new cogeneration facility, to import up to 14,800 Mcf per day of Canadian natural gas over a term of 15 years under the import arrangement as described in Encogen's 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 and the completion by DOE of its National Environmental Policy Act responsibilities.

C. Encogen shall notify 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 of the date of initial delivery of natural gas imported under Ordering Paragraph A within two weeks after deliveries begin.

D. Encogen shall file with the Office of Fuels Programs within 30 days

following each calendar quarter, quarterly reports showing by month, and by contract, 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 a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis.

E. 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 imposed in subsequent proceedings in this case. Encogen shall be bound by any opinion and order issued in subsequent proceedings.

Issued in Washington, D.C., April 30, 1991.

--Footnotes--

1/ One MMBtu equates to approximately one Mcf.

2/ Encogen originally planned to import gas for its cogeneration plant at a proposed interconnection between TransCanada and National Fuel at Grand Island, New York. To enable delivery, National Fuel previously proposed to build a five-mile pipeline from TransCanada's proposed Blackhorse Extension to an interconnection with a planned National Fuel pipeline on Grand Island and a separate ten-mile extension connecting National Fuel to its distribution affiliate, NFG Distribution. NFG Distribution will build a short pipeline segment between the cogeneration plant site and National Fuel.

Encogen subsequently supplemented its application on December 18, 1990, to describe transportation arrangements using Empire after National Fuel abandoned plans to construct facilities at the Canadian border that would have duplicated portions of Empire's proposed pipeline. Currently, Encogen proposes to use a portion of Empire's pipeline that crosses Grand Island. National Fuel instead would build a total of five miles of pipeline in two segments to connect its existing pipeline with Empire. NFG Distribution's new pipeline to the cogeneration facility would interconnect with one of the segments.

On December 4, 1989, Empire filed with the Federal Energy Regulatory Commission (FERC) an application for NGA section 3 authority (Docket No. CP90-316-000) and a Presidential Permit (Docket No. CP90-317-000) to site, construct, operate, and maintain its pipeline facilities at the international border. The FERC has not ruled on the merits of this application.

The entire Empire State Project, as currently configured, is a joint proposal by Empire, Great Lakes Gas Transmission Corporation, and National Fuel designed to transport both domestic and Canadian gas supplies to various customers within the State of New York. The largest portion of the project is the 155-mile intrastate pipeline proposed by Empire from the Canadian border east to Syracuse, New York. Additional pipeline facilities related to the overall Empire State Project would be built by Great Lakes in Michigan and National Fuel in New York. National Fuel has requested to withdraw its competitive alternative proposal to the westernmost portion of the Empire pipeline (FERC Docket Nos. CP90-854-000, CP90-920-000, CP90-967-000, and CP90-968-000) in lieu of its joint facilities with Empire.

On December 14, 1990, the FERC published a Notice of Intent to Prepare an Environmental Assessment (EA) for the Proposed Empire State Project and Request for Comments on Its Scope. (55 F.R. 5149, December 14, 1990). National Fuel's present filing (FERC Docket No. CP90-854-001), in coordination with

Empire, replaces its previous alternative. However, among the alternatives to the Empire proposal analyzed in the EA, it will evaluate the reasonableness of National Fuel's alternative as originally proposed.

3/ 10 U.S.C. 3801 et seq., as amended.

4/ 55 FR 4476, August 15, 1990.

5/ 55 U.S.C. 717b.

6/ 49 FR 6684, February 22, 1984.

7/ 42 U.S.C. 4321, et seq.