Cited as "1 FE Para. 70,444"

Project Orange Associates, L.P. (ERA Docket No. 88-01-NG), April 30, 1991.

DOE/FE Opinion and Order No. 500

Order Amending a Long-Term Authorization to Import Natural Gas from Canada

I. Background

On March 25, 1991, Project Orange Associates, L.P. (Project Orange) 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 to amend its long-term authorization to import natural gas from Canada issued September 29, 1990, in DOE/FE Opinion and Order No. 425 (Order 425).1/ The history of this matter is set forth in detail in DOE/FE Opinion and Order No. 274-A (Order 274-A) issued January 16, 1990.2/ Order 425 finalized the conditional authority granted on October 17, 1988, in DOE/ERA Opinion and Order 274 (Order 274) 3/ by authorizing Project Orange to import at Niagara Falls, New York, up to 120 Bcf of natural gas over a period of 20 years beginning on the date of the first delivery using the proposed Niagara Import Point Project pipeline facilities.4/

Currently, Project Orange and its Canadian supplier, Noranda Inc. (Noranda), have entered into a Restated Gas Sale and Purchase Agreement (Restated Agreement) dated March 18, 1991. The Restated Agreement supersedes and replaces the long-term gas sales and purchase contract dated December 8, 1987, which formed the basis of Project Orange's import authorization. In the original January 5, 1988, import application, the commercial operation date of the cogeneration facility and the date on which initial deliveries of gas would take place was projected to be June 30, 1990. The date is now anticipated to occur in July 1992.

Project Orange requests that its present authorization be amended to allow the importation of volumes purchased from Noranda pursuant to the Restated Agreement. The Restated Agreement incorporates changes which (i) update the prior agreement to account for the delay in achieving the commercial operation date of the cogeneration facility and the initial delivery date for gas, (ii) include security provisions requested by the lenders pursuant to the terms of the construction and term loan financing, (iii) clarify existing contractual provisions and (iv) adopt relatively minor, miscellaneous provisions. The key provisions to the Restated Agreement are increases in the lump-sum price to be paid for the gas which is now $88 million (approximately $0.737 per Mcf if the total contract volume is taken over the 20-year term) and the fee assessed by Noranda for production, gathering and processing costs in Alberta which is now $0.3226 per Mcf (with the same annual adjustment for inflation).5/ Project Orange would still pay separately the cost of transporting this gas from Alberta to the international border.

A notice of Project Orange's request for amendment was issued on April 8, 1991, inviting protests, motions to intervene, notices of intervention, and comments to be filed by April 26, 1991.6/ No interventions or comments were received.

II. Decision

Apart from the change in the lump-sum payment, the Restated Agreement does not substantially change the terms of the existing import arrangement. DOE adheres to its previous conclusion that authorizing the import is not inconsistent with the public interest under section 3 of the NGA.7/ As DOE held in Order 274, this import arrangement is competitive and consistent with DOE's import policy guidelines. Project Orange has negotiated a supply of gas which it believes would meet the needs of the proposed cogeneration facility under the terms and conditions it considers necessary for the successful operation of its cogeneration facility. Although the commodity pricing provisions of the import agreement depart from customary provisions focused on by DOE that permit fluctuation in response to market changes, the agreement resulted from the arms-length negotiations of the parties to the arrangement and reflected a balancing of their respective commercial interests. Project Orange has agreed to pay up front for the commodity at a fixed and favorable rate in order to obtain a long-term supply commitment.

Project Orange has demonstrated a need for the gas. Under the policy guidelines, imported gas that is competitive is presumed to be needed. That presumption has not been rebutted in this proceeding.

With respect to the security of the gas supply over the term of the import arrangement, DOE concludes that the proven reserves owned or controlled by Noranda would provide a secure supply of natural gas to Project Orange over the term of the requested authorization. Furthermore, there is no evidence in the record that Noranda is an unreliable supplier.

After taking into consideration all of the information in the record of this proceeding, I find that amending Project Orange's authorization to import natural gas from Canada under the Restated Agreement with Noranda 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. Project Orange Associates, L.P. (Project Orange) is authorized to import from Noranda, Inc. up to 120 Bcf of Canadian natural gas over a term of 20 years beginning on the date of first delivery in accordance with the pricing and other provisions of the Restated Gas Sale and Purchase Agreement dated March 18, 1991, contained in its amended application as discussed in this Opinion and Order.

B. Project Orange 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 deliveries of natural gas within two weeks after deliveries begin.

C. With respect to the imports authorized by this Order, Project Orange shall file with the Office of Fuels Programs, within 30 days following each calendar quarter, a quarterly report showing by month, 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.

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

--Footnotes--

1/ FE Para. 70,353.

2/ FE Para. 70,280.

3/ 1 ERA Para. 70,815.

4/ The environmental effects of authorizing Project Orange to import this natural gas were discussed in Order 425.

5/ Previously, the lump-sum payment was $77.6 million, or $0.65 per Mcf, and the fee was $0.30 per Mcf.

6/ 56 FR 14702, April 11, 1991.

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