

Cited as "1 FE Para. 70,452"

Poco Petroleum, Inc. (FE Docket No. 90-93-NG), May 29, 1991.

DOE/FE Opinion and Order No. 507

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

I. Background

On October 25, 1990, Poco Petroleum, Inc. (Poco), 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 up to 7.3 million MMBtu (7,300,000 Mcf) of natural gas annually beginning on the effective date of the authorization through October 31, 1999, and thereafter on a year-to-year basis if the underlying gas purchase contract between Poco Petroleums Ltd. (Poco Ltd.) and IGI Resources, Inc. (IGI), is extended in accordance with its terms. Poco will act as agent for its parent company, Poco Ltd., in importing the gas and arranging transportation for it. The gas would be purchased by IGI from Poco Ltd. and would enter the U.S. either at the import point near Sumas, Washington (Huntington, British Columbia), or at Eastport, Idaho (Kingsgate, British Columbia). The gas would be transported from the Sumas and Eastport import points to IGI via existing facilities of Northwest Pipeline Company (Northwest) and Pacific Gas Transmission Company (PGT) respectively.

Poco is a natural gas marketer and Poco Ltd. is an independent Canadian oil and gas exploration and production company which owns the reserves that will be used to supply the imported gas to IGI. IGI, also a natural gas marketer, is a wholly owned subsidiary of Intermountain Gas Industries, Inc., a public utility holding company with its headquarters in Boise, Idaho. The imported gas will be used by IGI to supply industrial customers on a direct sales basis, and local distribution companies who will resell the gas to residential, commercial, and industrial customers in the States of Idaho, Washington, Oregon, Utah, Nevada, California, and Colorado.

The imported gas will be sold to IGI by Poco in accordance with a gas sales contract between Poco Ltd. and IGI dated May 1, 1990. The Poco Ltd./IGI contract provides that the delivered contract price of the gas shall consist of three components: (1) a demand charge of \$.50 per MMBtu for transportation of the gas to the international border; (2) a stand-by component of \$.05 per MMBtu to compensate Poco for the cost of maintaining readiness to deliver gas up to the maximum daily contract quantity of 20,000 MMBtu per day; and (3) a commodity component of \$1.12 per MMBtu for gas actually purchased. The stand-by and commodity components of the gas contract price are subject to annual redetermination. If Poco Ltd. and IGI cannot agree upon a redetermined price, the Poco Ltd./IGI gas supply contract provides for binding arbitration in which the arbitrator, in making a final decision, must take into account the prices of substitutable energy sources and the price of other gas sold under similar terms and conditions which competes in the same or similar markets served by Poco Ltd. or IGI. IGI is obligated to pay the demand charge and the negotiated stand-by component whether any gas is taken or not. The applicant asserts that although there is no other take-or-pay or minimum bill provision in the Poco Ltd./IGI gas supply contract, the contract does contain a take-or-release provision. Under this provision, if IGI fails to take at least 85 percent of the annual contract quantity for two consecutive years,

then POCO Ltd. may reduce the annual contract quantity to the average annual volume of gas actually taken during the two-year period. Further, under the POCO Ltd./IGI contract, POCO Ltd. warrants that it has sufficient gas supplies to meet its obligations to IGI.

In support of its application, POCO asserts that the competitiveness of the imported gas would be assured by the annual price renegotiation provisions, the arbitration process, and the provision for reduction of contract volumes if sales under the contract do not meet expected levels. According to the applicant, the POCO Ltd./IGI import arrangement would help IGI diversify its gas sources and strike a balance between the need for flexibility as gas markets evolve and the need for long-term economic gas supply arrangements.

A notice of this application was published in the Federal Register on December 13, 1990, inviting protests, motions to intervene, notices of intervention, and comments to be filed by January 14, 1991.^{1/} Northwest filed a motion to intervene without comment. El Paso Natural Gas Company (El Paso) filed a motion to intervene requesting clarification of the POCO application, and, depending on the clarification, rejection of the POCO application or, alternatively, a hearing on the POCO application. IGI and PGT filed motions to intervene out of time in support of the POCO application. This order grants intervention to all movants, including those who filed out of time, since granting the late interventions will not cause any delay in this proceeding nor prejudice to any party.

In its motion, El Paso contends that POCO's filing appears to be inconsistent in that POCO states on the one hand that no new facilities are required to transport the proposed import of gas to IGI, while on the other hand, indicating that a portion of the proposed import may be transported on the proposed PGT Expansion Project facilities.^{2/} El Paso states that it has no objection to the proposed import if the gas would be imported using existing facilities, including existing facilities of PGT. Conversely, if the proposed import contemplates use of transportation facilities not yet built, i.e., the proposed pipeline facilities to be constructed under the PGT Expansion Project, then El Paso opposes the application, asks that it be rejected, or alternatively, set for hearing on unspecified issues which El Paso contends it has raised in other proceedings involving proposed imports of gas that are dependent upon completion of the proposed PGT Expansion Project facilities.^{3/} Further, El Paso requests that POCO's application be consolidated with PGT Expansion Project related proceedings so that double-counting of pipeline capacity contracting on those proposed facilities can be avoided.

On February 15, 1991, POCO filed an answer to El Paso's motion stating that the proposed import would be transported over existing facilities of Northwest and PGT and indicating that any future use of PGT's Expansion Project facilities would take place; if at all, after these facilities had been built and had become existing facilities. POCO also states that El Paso has failed to raise any objection under the public interest standards considered by DOE and asserts that El Paso's sole concern is POCO's possible future use of PGT Expansion Project facilities, if they are built, which may provide additional throughput on PGT's facilities and thereby lower rates for shippers who are competing in California markets with shippers on El Paso's pipeline facilities. Therefore, according to POCO, El Paso's objection is to potential pipeline competition to transport natural gas and not to POCO's proposed import.

On March 4, 1991, IGI filed a motion to intervene in support of POCO's application contending that El Paso has raised no issues relating to competitiveness of or need for the imported gas, security of supply or any other matter relevant to this proceeding. IGI asserts that POCO's application does not require DOE to evaluate the consequences of granting the import authority requested under the National Environmental Policy Act of 1969 (NEPA) 4/ since no new facilities are required. In addition, IGI asserts that there is no inconsistency between POCO's statement in the application that no new facilities are needed and POCO's statement that it may use PGT Expansion Project facilities after they have been constructed and become available.

On March 7, 1991 PGT filed a motion to intervene in support of POCO's application contending that El Paso's protest does not allege that the proposed import is inconsistent with the DOE's natural gas import policy guidelines.5/ PGT asserts that El Paso's concerns relate, not to the importation of natural gas by POCO, but rather to competition among pipelines for transportation of gas within the U.S., a matter clearly within the jurisdiction of the Federal Energy Regulatory Commission (FERC). According to PGT, El Paso seeks a duplicate forum in which to try to thwart the increased level of competition between PGT and El Paso for transportation of natural gas into California markets that would result if PGT succeeds in constructing its expansion project.

In an answer filed by El Paso to PGT's motion to intervene, El Paso asserts that its pleadings in the San Diego case,6/ are applicable to this proceeding with respect to the issues of competitiveness of the gas and security of the gas supply sources. El Paso contends in the San Diego case and in this proceeding that the Alberta province government in Canada, and not the market, may determine the price of the proposed imports if gas is to be transported over the proposed PGT expansion facilities. According to El Paso's pleading, the Alberta province government has threatened to raise prices and to terminate exports when price negotiations do not produce prices acceptable to the Alberta government, thereby jeopardizing security of supply.

II. Decision

The application filed by POCO 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".7/ This determination is guided by DOE's natural gas import policy guidelines.8/ 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.

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 arrangements should be sufficiently flexible to permit pricing and volume adjustments as required by market conditions. POCO's import proposal, as set forth in its application, is consistent with DOE policy guidelines. POCO Ltd., POCO's parent company, has entered into a freely negotiated, long-term gas purchase agreement with IGI under contract terms that should ensure that the price of the gas will remain market-responsive and competitive over the term of the authorization requested. Although the demand charge and the stand-by charge provided for in the POCO Ltd./IGI gas supply contract must be paid whether any gas is taken or

not, the commodity and the stand-by charges are subject to annual redetermination and binding arbitration proceedings if the parties cannot reach agreement. In the event that arbitration is required, the arbitrator must take into account, in rendering a decision, the price of other energy sources and the price of natural gas competing in IGI's or POCO Ltd.'s markets. Further, the annual contract volumes may be reduced if sales under the gas supply contract do not reach expected levels as a result of changing market conditions.

Need for the natural gas is viewed under DOE guidelines as a function of marketability and gas is presumed to be needed if it is competitive. POCO's proposed import has been found to be competitive and is therefore needed. Further, 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 reliability as a source of natural gas supplies. In addition, POCO has warranted that it has sufficient supplies to meet its obligations to IGI under the proposed import arrangement.

In making the foregoing findings with respect to competitiveness of and need for the imported gas, and security of the gas supply sources, FE has examined the concerns expressed by El Paso in this proceeding and has concluded that they have become moot in light of POCO's clarification of its application. POCO has expressly stated that only existing facilities are required for its proposed import of gas. Further, POCO has indicated that if it should decide to seek to use PGT's proposed expansion facilities to transport the imported gas, this action would be taken after these facilities have been built and have become existing facilities. Accordingly, since the objections expressed by El Paso are premised on its perception that POCO may be relying on PGT's proposed facilities to support its import proposal, El Paso's objections will not be given further consideration in this proceeding. FE notes, however, that even if PGT's proposed pipeline facilities were involved, El Paso's objections concerning contractual arrangements for use of PGT's expansion facilities reflect El Paso's concerns over FERC's policy as it relates to competition among pipelines. As such, El Paso's objections are not relevant to FE's evaluation of POCO's import proposal in this proceeding. Further, El Paso's references to possible Alberta provincial government action to raise prices of or to terminate exports of gas are speculative in nature and insufficient to form a basis for questioning the competitiveness of POCO's proposed import or the security of its gas supply sources.

After taking into consideration all of the information in the record of this proceeding, I find that granting POCO authority to import from Canada up to 7,300,000 MMBtu annually (7,300,000 Mcf) of natural gas on a firm basis through October 31, 1999, is not inconsistent with the public interest and should be approved.^{9/}

ORDER

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

A. POCO Petroleum, Inc. (POCO), is authorized to import from Canada up to 7,300,000 MMBtu (7,300,000 Mcf) annually of natural gas using existing pipeline facilities through October 31, 1999, in accordance with the provisions of a gas purchase agreement between POCO Petroleum Ltd. and IGI Resource, Inc., as described in the application and discussed in this Opinion and Order.

B. POCO 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.

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

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

Issued in Washington, D.C., May 29, 1991.

--Footnotes--

1/ 55 FR 51329, December 13, 1990.

2/ El Paso has opposed several proposed imports that would be dependent on completion of PGT's proposed expansion of its pipeline facilities. In a filing made on March 22, 1991, El Paso submitted a copy of its protest in the San Diego Gas & Electric Company case, Fe Docket No. 90-47-NG (San Diego), as representative of its position in opposition to proposed imports to be transported through PGT's proposed expansion facilities. The San Diego application is for a blanket authorization to import up to 100 MMcf per day of Canadian natural gas over a two-year period through PGT's proposed expansion facilities. El Paso's position in the San Diego case is discussed later in this Opinion and Order.

3/ Id., note 2.

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

5/ 49 FR 6684, February 22, 1984.

6/ Ibid., note 2.

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

8/ Ibid., note 5.

9/ Because the proposed importation of gas will use existing facilities, the DOE has determined that granting this application is clearly not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act 42 U.S.C. 4321, et seq., and therefore an environmental impact statement or environmental assessment is not required. See 40 CFR Sec. 1508.4 and 54 FR 12474 (March 27, 1989).

