

Cited as "1 FE Para. 70,486"

The Montana Power Company (FE Docket No. 91-39-NG), October 23, 1991.

DOE/FE Opinion and Order No. 538

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

I. Background

On June 3, 1991, The Montana Power Company (MPC) filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE), as supplemented on June 14, 1991, for authorization to import up to 50,000 MMBtu per day (50,000 Mcf) 1/ of natural gas from Canada beginning November 1, 1991, through October 31, 2006. The application was filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. MPC proposes to import this gas from its wholly-owned Canadian subsidiary, Canadian-Montana Pipe Line Company (CMPL), for its system supply. The volumes would enter the pipeline facilities of MPC at a point on the U.S.-Canada border near Aden, Alberta (Whitlash, Montana). No new pipeline construction is required. If this application is approved, it would replace MPC's existing authorization to import gas from CMPL which otherwise would expire December 31, 1992, and also lower by one-half the daily volume that had previously been authorized.2/

MPC is a public utility that operates an intrastate natural gas pipeline serving customers throughout western and central Montana. Since the early 1980's MPC's natural gas supply has been composed of about one-fourth Canadian natural gas and three-fourths Montana natural gas. Nearly all of MPC's Canadian gas is imported under two long-term agreements with CMPL; a small amount is obtained under a two-year blanket authorization granted by FE that will end February 6, 1993.3/ The blanket imports have been short-term arrangements to augment other gas supplies during the winter heating season.

MPC is currently receiving the majority of its natural gas supplies from Canada at Aden, Alberta, under a contract between MPC and CMPL dated October 30, 1984, as amended. This is the same contract that is the subject of the present application. The importation of this gas was initially approved by the Federal Power Commission (FPC). By order issued March 21, 1975, as amended, the FPC authorized MPC to import a maximum daily volume of gas not to exceed 99,460 Mcf through December 31, 1992.4/ This authorization would be replaced during its remaining term by the authorization sought in this proceeding.

MPC is also currently purchasing gas from CMPL under a separate long-term agreement dated May 1, 1979, as amended, and import authorization initially approved by the Economic Regulatory Administration (ERA) of DOE. The term of this authorization to import 1,060 Mcf per day of gas produced from the Reagan gas field 5/ in southwestern Alberta extends through December 31, 1993.6/

In its present application, MPC requests authorization to continue to import natural gas at Aden, but at a reduced level of 50,000 Mcf per day (in contrast to 99,460 Mcf per day), beginning November 1, 1991, for a period ending October 31, 2006. Authorization of this proposal would supercede MPC's current authorization over a year before its expiration date.

MPC states that the proposed extension of the Aden import arrangement would be governed by its October 30, 1984, gas purchase contract with CMPL, as amended by letter agreements dated November 29, 1988, and August 1, 1989. The contract provides for a maximum daily quantity of 50,000 Mcf at an initial price of \$1.69 (U.S.) per MMBtu. The price is subject to redetermination every six months. It is intended that the redetermined price be competitive in MPC's market area. The annual contract quantity (ACQ) under the agreement would be equal to the volume authorized for export from Canada by the National Energy Board of Canada (NEB). CMPL applied to the NEB to export 10 Bcf per year. The application is currently under review.^{7/}

The purchase contract imposes a take-or-pay obligation requiring MPC to purchase at least 60 percent of the ACQ. If MPC fails to take the required minimum volumes, it must pay a charge equal to 80 percent of the prevailing Imputed Alberta Border Price for each Mcf of gas below 60 percent not taken. The Imputed Alberta Border Price is established by the Government of Canada pursuant to the Petroleum Administration Act. Prepaid gas volumes may be made up by MPC over the entire contract term. If MPC has been unable to take all prepaid volumes at the time the contract expires, CMPL would refund money.

MPC has imported gas from the Aden area of Alberta since 1952. It contends that the proposed continuation of the importation of Canadian gas is necessary to meet the present and future demands of the Montana market.

DOE published a notice of receipt of MPC's application in the Federal Register on July 30, 1991,^{8/} inviting protests, motions to intervene, notices of intervention, and comments to be filed by August 29, 1991. No motions or notices to intervene nor protests to the granting of the application were received.

II. Decision

The application filed by MPC 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."^{9/} 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.^{10/} DOE also considers, particularly in long-term arrangements, need for and the security of the imported gas supply.

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 gas.

MPC's uncontested import proposal, as a whole, is competitive. DOE has reviewed the gas contract and is satisfied that its provisions would ensure the ability of the contracting parties to respond to changing market conditions. The price of the gas to be imported was negotiated between MPC and CMPL to be competitive with gas sold in MPC's market area. Although MPC is committed to take or pay for 60 percent of the ACQ, gas paid for but not taken in any particular year may be taken in subsequent years as make-up volumes. In addition, the contract provides MPC with the opportunity to recover all of the

money paid for gas not taken.

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 that MPC's proposed import arrangement is competitive and, therefore, can be presumed to be needed. In addition, we note that Canadian gas has been an integral part of MPC's supply portfolio for 40 years.

Finally, the security of this Canadian gas supply has not been disputed. In light of CMPL's historical and uncontested reliability as a supplier, DOE finds that security of supply has been established.

III. Conclusion

After considering all of the information in the record of this proceeding, I find that granting MPC authorization to import up to 50,000 Mcf per day of natural gas from Canada through October 31, 2006, in accordance with the provisions of its gas purchase agreement with CMPL, is not inconsistent with the public interest.¹¹ Concurrently with this authorization, DOE is vacating MPC's existing authorization to import up to 99,460 Mcf per day from CMPL which would have terminated December 31, 1992, because it covers the same contractual supply.

ORDER

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

A. The Montana Power Company (MPC) is authorized to import up to 50,000 Mcf per day of natural gas from Canada at a point on the international boundary near Aden, Alberta/Whitlash, Montana.

B. The authorization granted herein is to become effective November 1, 1991, and shall not extend beyond October 31, 2006.

C. The importation of natural gas hereby authorized shall be accomplished in accordance with the provisions of the gas purchase contract between MPC and Canadian-Montana Pipeline Company dated October 30, 1984, as amended on November 29, 1988, and August 1, 1989, which were described in the application filed in this proceeding and are discussed in this Opinion and Order.

D. The authorization granted to MPC by the Federal Power Commission on March 21, 1975, in Docket No. CP74-187, as amended, under which MPC is presently importing natural gas from Canada, is vacated effective November 1, 1991.

E. MPC 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.

F. With respect to the imports authorized by this Opinion and Order, MPC 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.

G. The first quarterly report required by Ordering Paragraph F is due not later than January 31, 1992, and should cover the period from November 1, 1991, through December 31, 1991.

Issued in Washington, D.C., October 23, 1991.

--Footnotes--

- 1/ One MMBtu is equal to approximately one Mcf.
- 2/ See letter from Mr. Douglas M. Canter, representing MPC, dated June 14, 1991.
- 3/ 1 FE Para. 70,409 (February 6, 1991).
- 4/ 53 FPC 908.
- 5/ The Reagan Field spans the international boundary.
- 6/ 1 ERA Para. 70,542 (July 20, 1981).
- 7/ On August 16, 1991, the NEB issued an interim order (Order No. GO-64-91) authorizing CMPL to export gas to MPC beginning November 1, 1991, through October 31, 1992, pending the NEB's final decision.
- 8/ 56 F.R. 36056 (July 30, 1991).
- 9/ 15 U.S.C. 717b.
- 10/ 49 F.R. 6684, February 22, 1984.
- 11/ Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.) and therefore an environmental impact statement or environmental assessment is not required. See 40 C.F.R. Sec. 1508.4 and 54 F.R. 12474 (March 27, 1989).