Cited as "1 FE Para. 70,501"

Vermont Gas Systems, Inc. (FE Docket No. 91-54-NG), November 26, 1991.

DOE/FE Opinion and Order No. 550

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

I. Background

On July 26, 1991, Vermont Gas Systems, Inc. (Vermont Gas) 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 import Canadian natural gas at the currently authorized level of 32,000 Mcf per day through October 31, 2006. Under DOE/FE Opinion and Order No. 382 issued February 7, 1990, in Docket No. 89-68-NG, Vermont Gas is authorized to import from Canada up to 32,000 Mcf per day of natural gas through October 31, 1992. Under proposed authorization extension, the gas would continue to be imported at the international border near Philipsburg, Quebec, Canada and delivered directly to Vermont Gas. No new pipeline construction is required for the proposed import of gas. The gas would be imported as the primary source of supply for Vermont Gas' distribution system. Vermont Gas is a local distribution company incorporated under the laws of the State of Vermont which provides natural gas service to approximately 23,000 residential, commercial and industrial customers.

Vermont Gas currently imports gas from TransCanada PipeLines, Inc. (TransCanada) pursuant to a gas purchase contract ending October 31, 1992. On June 26, 1991, Vermont entered into a fifteen-year gas purchase contract with Western Gas Marketing Limited (WGML), a subsidiary of TransCanada, which replaces and supersedes the Vermont Gas/TransCanada contract once all necessary regulatory approvals have been obtained. Under the contract with WGML, Vermont Gas would import gas at the initial rate of 32,000 Mcf per day. Although the contract permits Vermont Gas to seek an increase in the daily contract volume level, the applicant acknowledges that an amendment to its import authorization would have to be obtained before any such increase could be implemented.

The Vermont Gas/WGML contract contemplates that Vermont will obtain underground gas storage, and that once Vermont Gas has obtained gas storage, Vermont Gas would reduce its daily contract volume and more evenly distribute its purchases of gas during a contract year. Vermont Gas has a one-time contract right to request a further reduction in daily contract volume of up to 5,000 Mcf per day once it has obtained gas storage services.

The pricing structure for the imported gas under the Vermont Gas/WGML contract includes a demand charge, a firm commodity and an interruptible commodity charge. The demand charge consists of TransCanada's and NOVA Pipeline's (NOVA) demand charges for firm transportation of the gas from Alberta, Canada, to the export point near Philipsburg, Quebec. The contract provides that Vermont Gas would phase into paying TransCanada's demand charges starting with 85 percent of such charges in 1991-92, 90 percent in 1992-93, 95 percent in 1993-94, and 100 percent in 1994-95 and thereafter over the remaining term of the contract. If Vermont Gas obtains underground storage before 1994-95, then Vermont Gas will pay 100 percent of TransCanada's tolls at that time. Vermont Gas would pay Nova's demand charges beginning in the

1992-93 contract year unless TransCanada's demand charges for that year are more than five percent higher than TransCanada's 1991-92 demand charges, in which case payment of the NOVA demand charge would be delayed until the 1993-94 contract year.

The firm commodity charge for the imported gas under the Vermont Gas/WGML contract would be $2.25 (U.S.) per MMBtu for the 1991-92 contract year. Thereafter, the firm commodity charge for each contract year would be an amount equal to the average price paid at the Alberta border by eastern Canada local distribution companies (LDC's) for gas purchased from WGML under long-term contracts for resale to the LDC's firm customers, plus TransCanada's commodity toll for transportation of the gas from Alberta to Philipsburg, Quebec.

The interruptible commodity charge for gas purchased for resale to Vermont Gas' interruptible customers is indexed to the monthly average price of No. 6 (2% sulphur) fuel oil at Albany, New York, and is computed as follows: 1.55 times the average price per barrel of No. 6 (2% sulphur) fuel oil divided by 16.05. Further, the Vermont Gas/WGML contract provides that the average price of the No. 6 fuel oil used in the pricing formula shall be adjusted each year to reflect the weighted average prices of all alternative fuels used in significant amounts by Vermont Gas' interruptible customers.

In addition, the Vermont Gas/WGML contract provides for renegotiation of the commodity charges for the imported gas at the request of either Vermont Gas or WGML prior to the 1993-94 contract year and every two years thereafter, and more frequently if the firm commodity charge is not competitive with alternative fuels available to Vermont Gas customers. If unable to agree on a price by negotiation, either Vermont Gas or WGML may require that the matter be resolved by arbitration.

Vermont Gas is obligated to purchase a minimum of 3.4 Bcf of natural gas during each contract year unless Vermont Gas experiences a significant reduction in firm market requirements, in which case, Vermont Gas and WGML may negotiate a reduced minimum annual purchase requirement. Once Vermont Gas has obtained gas storage service, Vermont Gas may also reduce its daily contract volume with WGML to have the gas supplied by another supplier and, if it does so, then Vermont Gas and WGML may negotiate a reduced minimum annual purchase requirement.

With respect to excess pipeline capacity on TransCanada's pipeline facilities which Vermont Gas does not use to transport the imported gas, WGML may use the excess capacity to make gas sales to other customers. Vermont Gas may also request assignment of the pipeline capacity not used by WGML to Vermont Gas for reassignment to other parties.

In support of its application, Vermont Gas asserts that the pricing arrangements in the Vermont Gas/WGML gas purchase contract are comparable to other long-term supply arrangements with local distribution companies and that the imported gas will remain competitive over the life of the contract because of provisions in the contract for renegotiation of contract terms and arbitration if necessary to achieve a price that is competitive in Vermont Gas' market. In addition, the price of interruptible gas is indexed to the price of alternative fuels in Vermont Gas' market. According to Vermont Gas, flexibility afforded by contract provisions for adjusting contract quantities and minimum take obligations also help assure that the imported gas is responsive to market conditions. Further, Vermont Gas can diversify its supplies by obtaining gas from another supplier other than WGML, or by obtaining underground storage accompanied by a reduction in contract quantities under its contract with WGML.

Vermont Gas states in its application that the gas is needed since Vermont Gas is not interconnected with any U.S. pipeline and therefore cannot directly obtain domestic supplies of gas for its gas requirements. Security of supply, according to Vermont Gas, is assured since the imported gas would come from reserves dedicated by over 700 producers to a gas supply pool maintained by TransCanada and WGML.

A notice of receipt of the application was issued September 9, 1991,1/ inviting protests, motions to intervene, notices of intervention and comments to be received by October 15, 1991. No interventions or comments were received.

II. Decision

The application filed by Vermont Gas 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." 2/ This determination is guided by DOE's natural gas import policy guidelines, under which the competitiveness of the import in the market served is the primary consideration for meeting the public interest test.3/ 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 natural gas.

Vermont Gas' uncontested import proposal, as a whole, is competitive. The firm commodity charge which Vermont Gas pays for the imported gas must reflect the prices paid by other local distribution customers of WGML, namely, LDCs in eastern Canada. Further, the interruptible commodity charge which Vermont Gas must pay is indexed to the average price of competing alternative fuels in Vermont Gas' market area, including in particular, No. 6 (2% sulphur) fuel oil. In addition, the Vermont Gas/WGML gas purchase contract provides for periodic renegotiation, and if necessary, arbitration of commodity charges in order to achieve a price for the imported gas that is competitive with alternative fuels in Vermont Gas' market area.

Although Vermont Gas is obligated to purchase a minimum of 3.4 Bcf of natural gas during each contract year, the Vermont Gas/WGML gas purchase contract provides for negotiation of a reduced minimum purchase requirement in the event of significant reduction in Vermont Gas' firm market requirements, and for further minimum purchase reduction once Vermont Gas has obtained underground gas storage service. Demand charge obligations for transportation of the imported gas by TransCanada may be reduced for pipeline capacity not used as a result of reduction in gas purchases from WGML if the excess capacity is used by WGML for other customers or if Vermont Gas is able to reassign excess capacity to other parties. Taken together, these provisions of the import arrangement should assure that the price of the imported gas remains competitive over the term of the import authorization requested.

Need for the gas is viewed under the DOE guidelines as a function of marketability and the gas is presumed to be needed if it is competitive. Further, since Vermont Gas is not interconnected with any U.S. pipeline, as a practical matter, the import arrangement is essential to Vermont Gas' ability to meet its gas supply requirements.

Security of the Canadian gas supply to support the import arrangement has not been disputed and, according to the applicant, is assured by the largest gas supply pool in North America provided by over 700 producers. In addition, there has never been an instance of a major gas supply interruption that would call into question WGML's reliability as a natural gas supplier to the U.S.

Based on the information in the record of this proceeding, I find that granting Vermont Gas authority to import up to 32,000 Mcf per day of natural gas through October 31, 2006, in accordance with the provisions of its gas purchase agreement with WGML, is not inconsistent with the public interest.4/

ORDER

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

A. Vermont Gas Systems, Inc. (Vermont Gas) is authorized to import at the import point near Philipsburg, Quebec, Canada, up to 32,000 Mcf per day of Canadian natural gas, in accordance with the provisions of its June 26, 1991, gas purchase contract with Western Gas Marketing Limited (WGML), as described in the application and discussed in this Opinion and Order.

B. The authorization is effective immediately and shall continue through October 31, 2006.

C. Vermont Gas 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.

D. With respect to the imports authorized by this Opinion and Order, Vermont Gas 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. The monthly pricing information shall include a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis if applicable. On reporting the volumes and pricing information, the quarterly report should list the firm and interruptible supplies separately. Failure to file quarterly reports may result in termination of this authorization.

E. The first quarterly report required by paragraph D of this order is due not later than January 30, 1992, and should cover the period from the date of this order until the end of the current calendar quarter December 31, 1991.

Issued in Washington, D.C., November 26, 1991.

--Footnotes--

1/ 56 FR 46604 (September 13, 1991).

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

3/ 49 FR 6684, February 22, 1984.

4/ 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. (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 FR 12474 (March 27, 1989).