Cited as "1 FE Para. 70,503"

Boston Gas Company (FE Docket No. 89-38-NG), November 27, 1991.

DOE/FE Opinion and Order No. 552

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

## I. Background

On June 22, 1989, Boston Gas Company (Boston Gas) filed an application, as later supplemented, 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. Boston Gas requests authorization to import from Esso Resources Canada Limited (Esso) up to a maximum daily quantity (MDQ) of 35,000 Mcf of Canadian natural gas on a firm basis, plus additional interruptible volumes, subject to an aggregate term total of 192 Bcf. The gas would enter the United States at the international border near Iroquois, Ontario, where the facilities of TransCanada PipeLines Limited (TransCanada) interconnect with those of Iroquois Gas Transmission System, L.P. (Iroquois) and would be transported to Boston Gas by Iroquois and Tennessee Gas Pipeline Company (Tennessee).

Boston Gas, a Massachusetts corporation with its principal place of business in Boston, Massachusetts, is a wholly-owned subsidiary of Eastern Enterprises and is engaged in the distribution and sale of natural gas to approximately 500,000 residential, commercial and industrial customers in the City of Boston and 73 other cities and towns in eastern Massachusetts. Boston Gas intends to use the gas to meet market requirements in this service area, and indicates these requirements are projected to exceed supply available from historical sources.

On May 1, 1989, Boston Gas and Esso entered into a natural gas sales agreement under which Boston Gas agrees to purchase up to a MDQ of 35,000 Mcf of natural gas, plus additional volumes if available, over a 15-year term beginning with firm deliveries, which at the time of application had been expected to commence November 1, 1991. The total volume to be imported over the 15-year term would not exceed 192 Bcf. Under the agreement Boston Gas is obligated to take a minimum quarterly quantity equal to 75 percent of the sum of the MDQ in effect for the quarter. The MDQ is subject to reduction by Esso if Boston Gas purchases less than the 75 percent for a 730 consecutive day period or if Esso's reserves are insufficient to meet delivery obligations. In addition, the contract contains make up provisions and requires Esso to credit Boston Gas with any offset demand charges.

The price per Mcf to be paid by Boston Gas for volumes at the border delivery point would be comprised of a commodity and a transportation charge. The commodity charge would be a function of a base price indexed according to a basket of alternate fuel prices, including No. 2 and No. 6 fuel oil, and natural gas. The transportation charge would include all fixed and variable transportation charges paid by Esso for transportation of the gas in Canada. Boston Gas estimates that, had deliveries taken place on November 1, 1991, the commodity charge would have been $1.9827 (U.S.) and the transportation charge would have been $.8654, for a total of $2.8481 per Mcf. Adjustments to both charges would be determined monthly and, after 1991, either party could request renegotiation of the commodity charge at three-year intervals. If

renegotiation does not result in agreement, the contract provides for arbitration.

If a minimum take deficiency occurs in a particular quarter, Boston Gas would pay Esso an amount equal to the deficiency times 20 percent of the average monthly commodity charge applicable to the quarter in which the deficiency occurred. If a deficiency accumulated in a quarter is repurchased within 365 days of the end of the quarter, Boston Gas would pay Esso the higher of the commodity charge in effect during the month in which deliveries occurred, the highest commodity charge Esso could receive from a third party, or such other commodity charge agreed to by Boston Gas and Esso, plus any and all transportation charges.

## II. Interventions and Comments

A notice of receipt of the application was published in the Federal Register on February 2, 1990,1/ inviting protests, motions to intervene, notices of intervention, and comments to be filed by March 5, 1990. Motions to intervene without comments or request for additional procedures were filed by Distrigas Corporation and Great Lakes Gas Transmission Company. This order grants intervention to all movants.

## III. Decision

The application filed by Boston 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 an import in the markets served is the primary consideration for meeting the public interest test.3/ DOE also considers, particularly in a long-term arrangement, need for and the security of the imported gas supply. In addition, the environmental effects of the import arrangement are considered.

### A. General Policy 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 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.

Boston Gas' uncontested import proposal, as a whole, is competitive. DOE has reviewed the gas contract and is satisfied that its provisions would ensure a competitive gas price and the ability of the contracting parties to respond to changing market conditions. In support of its application, Boston Gas states that the terms and conditions of the sales agreement are flexible with respect to both volume and price, and thus assure a gas supply that can be marketed competitively over the life of the sales agreement. Boston Gas notes that the sales agreement provides for monthly adjustments to the commodity price based on changes in alternate fuel prices and provides for renegotiation and arbitration of key pricing terms. In addition, Boston Gas states that the price of the proposed import is designed to remain competitive against competing natural gas supplies and alternate fuels.

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 Boston Gas' proposed import arrangement is competitive and, therefore, can be presumed to be needed.

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

B. Environmental Aspects

1. Overview

Environmental concerns are an important element in DOE's public interest determination. In general, DOE considers environmental issues in the context of the National Environmental Policy Act (NEPA) of 1969.4/ This import is part of the second phase of the Iroquois/Tennessee Pipeline Project, a proposal to construct and operate pipeline facilities, including the new 365-mile Iroquois system extending from the U.S./Canada border through eastern New York and western Connecticut and terminating on Long Island, New York. The entire project (Phase I and II), as proposed, would transport up to 575,900 Mcf per day of natural gas (primarily Canadian) on a firm basis to 17 local distribution companies, three cogeneration customers, and one electric generation customer in the northeastern United States. Iroquois would deliver part of the gas directly to certain customers and deliver the remaining volumes to Tennessee, Algonquin, and Texas Eastern Transmission Company for redelivery to the remaining Iroquois customers.

To build the facilities used to transport Canadian gas as the Iroquois/Tennessee Project sponsors propose, there must be approval from FERC. Under section 3 of the NGA, FERC has jurisdiction over the siting, construction, and maintenance of pipeline facilities that cross the international border from Canada and enter the United States. In addition, under section 7 of the NGA, FERC is responsible for determining that interstate natural gas transportation facilities are in the public interest. If FERC determines that the border-crossing facilities would not be inconsistent with the public interest and there is or will be a need for a proposed service, it will issue a Presidential Permit and a Certificate of Public Convenience and Necessity authorizing the construction and operation of a proposed project.

As the lead Federal agency for the Iroquois/Tennessee Project, FERC was responsible for developing information and preparing the relevant documents to identify the potential environmental impacts from the project in compliance with NEPA and the Council on Environmental Quality regulations for implementing NEPA (40 CFR Parts 1500-1508). FERC divided the Iroquois/Tennessee Project into two phases by an order issued July 30, 1990.5/ Phase I involved construction and operation of virtually all of the Iroquois pipeline system (except an interconnection with Algonquin) to provide transportation for up to 422,900 Mcf per day of gas. That phase also involved construction of 63 miles of pipeline facilities by Tennessee. Phase II involves the construction of pipeline, compression, and metering facilities by Iroquois, Tennessee, and Algonquin that would be used to transport and deliver up to 153,000 Mcf per day of Canadian gas for Boston Gas and five other importers.

On November 14, 1990, FERC issued a Presidential Permit to Iroquois and

certificated the Phase I facilities.6/ DOE issued final authorization for importation of the Phase I volumes on November 15, 1990.7/ The potential environmental effects of the Phase I facilities were addressed in a final Environmental Impact Statement (EIS) issued by FERC on June 1, 1990 (which was adopted as DOE/EIS-0152). They were also discussed in DOE's Record of Decision for granting the Canadian gas import applications related to Phase I.8/ DOE concluded that the anticipated overall physical impacts of the proposed Phase I facilities on the natural environment would be relatively minor and could be mitigated. Construction of the Iroquois mainline is nearly completed and it will soon be placed in operation.

In September 1991, FERC issued an Environmental Assessment (EA) for Phase II (which was adopted as DOE/EA-0592). The Phase II facilities consist of 25.4 miles of pipeline loop, 21.3 miles of replacement pipeline, 3.6 miles of new lateral, 19,500 horsepower of compression (including two new compressor stations), and various metering facilities to be constructed in Connecticut, Massachusetts, Rhode Island, and New York. On October 9, 1991, Phase II was certificated by FERC.9/ The FERC certificate imposed environmental conditions outlined in the EA to minimize the impact associated with construction and operation of the proposed facilities. In addition, it prohibited construction of any Phase II facilities until Iroquois, Tennessee, and Algonquin file with FERC copies of final DOE import authorizations for all Canadian gas that would be delivered in Phase II.

2. Impacts

The EA for Phase II of the Iroquois/Tennessee Project addresses construction procedures for the proposed pipelines and aboveground facilities; erosion control and revegetation plans for the construction rights-of-way; impact on streams and wetlands, vegetation, wildlife, fisheries, threatened or endangered species, noise and air quality, land use, public lands (including the Appalachian National Scenic Trail), state forests and state wildlife management areas, residential areas, and cultural resources; polychlorinated biphenyls; and alternatives to the proposed pipeline routes and new aboveground facility sites. In addition, the document recommended that FERC include 24 environmental mitigation measures in any certificate issued to Tennessee and Algonquin. The EA concluded that if constructed in accordance with the recommended mitigation measures, the proposed Iroquois/Tennessee Phase II Project would not be a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and would therefore not require the preparation of an EIS.

Inasmuch as the information and analysis in the EA determined that construction of the facilities for Phase II of the Iroquois/Tennessee Project would not result in significant long-term or cumulative environmental impacts, DOE believes that Boston Gas' import proposal does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA. Therefore, no environmental impact statement is required and DOE issued a finding of no significant impact (FONSI) on November 26, 1991.10/

IV. Conclusion

After reviewing the entire record of this proceeding, including the EA of the proposed pipeline facilities necessary to provide transportation for the gas, I find that granting Boston Gas authority to import up to 35,000 Mcf per day of Canadian natural gas on a firm basis, plus additional interruptible

volumes, not to exceed a term total of 192 Bcf, for a 15-year term after firm deliveries begin, in accordance with the provisions of its gas sales agreement with Esso, is not inconsistent with the public interest.11/

## ORDER

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

A. Boston Gas Company (Boston Gas) is authorized to import, at a point on the international border near Iroquois, Ontario/Waddington, New York, up to 35,000 Mcf of Canadian natural gas per day on a firm basis, plus additional volumes on an interruptible basis, subject to an aggregate term total of 192 Bcf. The authorization is effective on the date of this Opinion and Order and continues for a period of 15 years from commencement of firm deliveries.

B. The importation of natural gas hereby authorized shall be accomplished in accordance with the provisions of the gas purchase contract between Boston Gas and Esso Resources Canada Limited (Esso) dated May 1, 1989, which were described in the application filed in this proceeding and are discussed in this Opinion and Order.

C. Boston 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, Boston 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. If no imports have been made, a report of "no activity" for that calender quarter must be filed. The monthly price information shall itemize separately the demand/commodity charges breakdown on a monthly and per unit (MMBtu) basis. Boston Gas shall also notify OFP of any reduction in the "maximum daily quantity", and of any deficiency payments it makes to Esso during any contract year, including an explanation of how the amount paid was derived, in the first quarterly report following payment.

E. The motions to intervene filed by Distrigas Corporation and Great Lakes Gas Transmission Company are hereby granted, provided that their participation shall be limited to matters specifically set forth in their motions to intervene and not herein specifically denied, and that the admission of these intervenors shall not be construed as recognition that they may [be] aggrieved because of any order issued in these proceedings.

F. The first quarterly report required by Ordering Paragraph D is due not later than January 30, 1992, and should cover the period from the date hereof until the end of the current calender quarter, December 31, 1991. Failure to file quarterly reports may result in termination of this authorization.

Issued in Washington, D.C. November 27, 1991.

--Footnotes--

1/ 55 FR 3641.

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

3/ 49 FR 6684, February 22, 1984.

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

5/ Iroquois Gas Transmission System, L.P., 52 FERC 61,091.

6/ Opinion No. 357, 53 FERC 61,194; Opinion No. 357-A, rehearing denied in part and granted in part, 54 FERC 61,103 (February 4, 1991).

7/ See Brooklyn Union Gas Company, et al., 1 FE 70,370 (November 15, 1990), rehearing denied, 1 FE 70,400 (January 16, 1991); Orchard Gas Corporation, 1 FE 70, (November 15, 1990); Selkirk Cogen Partners, L.P., 1 FE 70,375 (November 15, 1990); Pawtucket Power Associates, 1 FE 70,376 (November 15, 1990); and Granite State Gas Transmission, Inc., 1 FE 70,377 (November 15, 1990).

8/ See 55 FR 48685, November 21, 1990.

9/ See Iroquois Gas Transmission System, L.P., et al., 57 FERC Para. 61,047.

10/ The FONSI is available in the Office of Fuels Programs public file associated with this proceeding.

11/ In conjunction with this order, DOE is issuing final authorization to Brooklyn Union Gas Company, et al. (ERA Docket Nos. 86-44-NG, et al.), New England Power Company (FE Docket No. 90-09-NG), and Granite State Gas Transmission, Inc. (FE Docket No. 90-23-NG) for importation of the remaining 118,000 Mcf per day of the 153,000 Mcf per day Phase II volumes.