

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

NORTHERN STATES POWER COMPANY
(WISCONSIN)

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) FE DOCKET NO. 91-71-NG
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ORDER GRANTING LONG-TERM AUTHORIZATION
TO IMPORT NATURAL GAS FROM CANADA
AND GRANTING INTERVENTION

DOE/FE OPINION AND ORDER NO. 616

MAY 18, 1992

I. BACKGROUND

On September 5, as amended on October 21, 1991, and February 12, 1992, Northern States Power Company (Wisconsin), hereafter referred to as NSPW, filed an application with the Office of Fossil Energy of the Department of Energy (DOE) for authorization to import up to 7,500 Mcf per day of natural gas from Canada over a ten-year term, commencing on the later of November 1, 1992, or the date of first delivery. The application was filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. NSPW would import this gas from ProGas Limited (ProGas) under a gas sales and purchase contract dated November 1, 1990. The gas would be imported at the point on the U.S.-Canada border near Emerson, Manitoba, where Great Lakes Gas Transmission Company's (Great Lakes) pipeline system interconnects with TransCanada Pipelines Limited. Great Lakes would then deliver the gas directly to NSPW's local distribution facilities or transport it to either Viking Gas Transmission Company or Northern Natural Gas Company for delivery to NSPW. NSPW states that no new pipeline construction would be required for the import.

NSPW is a public utility incorporated in the State of Wisconsin and a wholly-owned subsidiary of Northern States Power Company (Minnesota). NSPW provides electricity and natural gas service to customers in upper and central Wisconsin as well as Michigan's Upper Peninsula. NSPW would use the proposed gas imports to meet increased system demand.

Under its gas sales contract with ProGas, NSPW has agreed to purchase a minimum annual quantity equal to 75 percent of the sum of the daily contract quantities (DCQ) of 7,500 Mcf for the peak period months of December through February and no less than 40 percent of the DCQ for the remaining months, March through November. The contract DCQ is also subject to adjustment if NSPW does not make minimum annual purchases that average at least 55 percent of the DCQ over a three-year period.

The sales contract requires NSPW to pay ProGas a contract price consisting of a commodity price, as described below, any demand charges incurred by ProGas to deliver the gas, and a gas inventory charge. The commodity price to be paid in any month would equal the product of the base commodity price, \$1.70 (U.S.) per MMBtu delivered, times a predetermined monthly adjustment factor. Prices would be adjusted annually to reflect changes in the weighted average commodity prices (WACOG) under comparable long-term contracts for deliveries at Emerson to utilities in the U.S. Midwest. The percentage of change in the Midwest market WACOG would be added to (or subtracted from) NSPW's base commodity price to determine the applicable annual commodity charge for each new contract year. Also, if NSPW fails to nominate the minimum seasonal quantities, the contract requires it to pay ProGas a gas inventory charge of \$.25 per Mcf times the seasonal shortfall. In addition, the contract provides for renegotiation and, absent agreement, arbitration of the commodity price and the commodity price adjustment mechanism if it fails to

track either: (1) changes in the WACOG of long-term gas exported from Alberta to the U.S. Midwest market; (2) changes in the commodity spot price of U.S. and Canadian gas in the Midwest market; or (3) NSPW's WACOG relative to seven competing gas distribution companies in its market pursuant to section 7.12 of its gas sales agreement.

In support of its application, NSPW asserts the pricing, renegotiation, and arbitration provisions in its gas sales contract provide sufficient flexibility to assure a competitive price that will reflect market conditions throughout the term of the contract. NSPW also submits that the long-term imports are needed and secure. According to its application, NSPW's natural gas demand between 1987 and 1990 increased from 11.4 to 14.1 Bcf, and NSPW anticipates at least a 5 percent annual growth rate for near-term deliveries. Regarding security of supply, NSPW also states that it has contracted for long-term gas storage with ANR Storage Company to increase both the reliability and diversity of its supply sources. According to NSPW, security of supply is further ensured by contract provisions that allow it to obtain replacement gas supplies from third parties in the event ProGas fails to make deliveries and may elect to terminate its contract with ProGas if it fails to make deliveries for a period of 90 days in any contract year. Further, where ProGas should experience a supply short-fall, it must deliver to NSPW its pro-rata share of its total available supply.

II. INTERVENTIONS AND COMMENTS

A notice of receipt of application was published in the Federal Register on January 8, 1992, 1/ inviting protests, motions

to intervene, notices of intervention, and comments to be filed by February 7, 1992. A motion to intervene without comment was received from Great Lakes.

III. DECISION

The application filed by NSPW 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.

NSPW's uncontested import proposal, as a whole, is competitive. DOE has reviewed the gas contract and is satisfied that its provisions establish a competitive gas price and provide contracting parties with sufficient flexibility, with respect to both volume and price, to respond to changing market conditions,

1/ 57 FR 683.

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

3/ 49 FR 6684, February 22, 1984.

thus assuring a gas supply that can be marketed competitively over the life of the sales agreement. In this regard, DOE notes that the sales agreement provides for annual price adjustments to the commodity price based on changes in the price of gas purchased by competing gas utilities serving the Midwest market. In addition, the contract contains provisions which allow NSPW or its supplier to request arbitration if the parties are unable to agree to a change in the commodity price or the method of adjusting that price.

For these reasons, DOE finds that NSPW's proposed import arrangement is competitive and, under DOE's import guidelines, can therefore be presumed to be needed. In addition, based on NSPW's uncontested assertions that ProGas has adequate reserves to support its import requirements and contract terms that allow NSPW to obtain third party supplies in the event of non-delivery, DOE finds that security of supply has been established.

After considering all of the information in the record of this proceeding, I find that granting NSPW authorization to import up to 7,500 Mcf per day of natural gas from Canada commencing on the later of November 1, 1992, or date of first delivery, for a ten-year term, in accordance with the provisions

of its gas purchase agreement with ProGas, is not inconsistent with the public interest. 4/

ORDER

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

A. Northern States Power Company (Wisconsin) (NSPW) is authorized to import at the international boundary near Emerson, Manitoba, Canada, up to 7,500 Mcf per day of natural gas in accordance with the provisions of its November 1, 1990, gas sales and purchase contract (gas sales contract) with ProGas Limited (ProGas), as described in the application and discussed in this Opinion and Order.

B. This authorization shall commence the later of November 1, 1992, or the date of first delivery, and continue for ten years.

C. NSPW 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.

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 (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. 1508.4
and 54 F.R. 12474 (March 27, 1989).

D. With respect to the imports authorized by this Opinion and Order, NSPW shall file with the Office of Fuels Programs (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 price information shall itemize separately the demand, commodity, and any gas inventory charges under the gas sales contract, on a monthly and per unit (MMBtu) basis. If no imports have been made, a report of "no activity" for that calendar quarter must be filed. Failure to file quarterly reports may result in termination of this authorization.

E. The first quarterly report required by Ordering Paragraph D is due not later than July 30, 1992, and should cover the period from April 1, 1992, through June 30, 1992.

F. The motion to intervene filed by Great Lakes Gas Transmission Limited Partnership is hereby granted, provided that its participation shall be limited to matters specifically set forth in its motion to intervene and not herein specifically denied, and that admission of this intervenor shall not be

construed as recognition that it might be aggrieved because of any order issued in this proceeding.

Issued in Washington, D.C., May 18, 1992.

Charles F. Vacek
Deputy Assistant Secretary
for Fuels Programs
Office of Fossil Energy