UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

```
________________________________
                                )
DARTMOUTH POWER ASSOCIATES      )
LIMITED PARTNERSHIP             )          DOCKET NO. 90-80-NG
________________________________)
```

CONDITIONAL ORDER GRANTING LONG-TERM AUTHORIZATION TO IMPORT NATURAL GAS FROM CANADA

DOE/FE OPINION AND ORDER 622

MAY 27 1992

I. BACKGROUND

On September 17, 1990, Dartmouth Power Associates Limited Partnership (DPA) 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, requesting authorization to import 16,000 Mcf per day (Mcf/d) of natural gas from Canada over a twenty year term beginning upon the date a combined-cycle, independent power facility owned by DPA and constructed in Dartmouth, Massachusetts, begins commercial operations. The plant was completed in April, 1992, and is expected to begin commercial operations in July, 1992. Start-up operations at the plant, using domestic gas, began in May 1992.

DPA is a Massachusetts limited partnership. The 68 megawatts of electricity generated by DPA's independent power facility will be sold to Commonwealth Electric Company (CEC). In order to fuel the facility, DPA requests authority to import up to a total of 16,000 Mcf/d of natural gas from four Canadian natural gas exploration and production companies. The natural gas would be imported under the terms and conditions of four separate gas purchase agreements (collectively the Agreements) between DPA and Canadian Natural Resources Limited (CNRL), Columbia Gas Development of Canada, Ltd. (Columbia), Excel Energy Inc. (Excel), and Remington Energy Ltd. (Remington) (collectively the Suppliers). DPA has contracted to purchase up to 5,000 Mcf/d of natural gas from CNRL, up to 3,000 Mcf/d of natural gas from

Columbia, up to 2,000 Mcf/d of natural gas from Excel, and up to 6,000 Mcf/d of natural gas from Remington. The initial firm delivery date of gas under these gas purchase agreements is the later of November 1, 1992, or the date that all necessary facilities of the Canadian and U.S. transporters are in place and operational. Deliveries will continue for twenty years from the initial firm delivery date.

DPA has entered into agreements for firm transportation of the gas with NOVA Corporation of Alberta (NOVA), TransCanada Pipelines Limited (TransCanada), Iroquois Gas Transmission System (Iroquois), Tennessee Gas Pipeline Company (Tennessee), and Algonquin Gas Transmission Company (Algonquin). The point of delivery under the Excel, Remington, and Columbia Agreements are the points of inlet on the NOVA system. The point of delivery under the CNRL Agreement is the point of inlet on the TransCanada system (DPA will reimburse CNRL for its NOVA transportation costs). The imported gas will be transported on the NOVA system to the Alberta border. From the Alberta border, gas subject to each of the Agreements will be transported on the TransCanada system to Iroquois, Ontario, at the U.S. and Canadian international border. From that point Iroquois will transport the gas to Wright, New York, and from there to a point of interconnection with Tennessee. From the Tennessee interconnection, the gas will be transported to an existing interconnection with Algonquin at Mendon, Massachusetts, and from there Algonquin will deliver the gas to the Dartmouth facility. Tennessee and Iroquois plan to construct or upgrade, as necessary, facilities to provide transportation to DPA, applications for which are pending at the Federal Energy Regulatory Commission (FERC). DPA, with FERC approval, recently constructed approximately 150 feet of interconnecting pipeline from the Algonquin mainline to a metering station at its facility and 200 feet of pipeline from the metering station to the generating plant.

The base price for the imported natural gas, under all of the gas purchase agreements, is $1.453 per MMBtu (U.S.), to be adjusted monthly based on gas prices in the Alberta and northeast United States markets. The actual Adjusted Commodity Charge (ACC) per MMBtu shall be based on a percentage of the base price. Such percentage is computed by dividing the Adjusted Fuel Cost (AFC) by a base index of 2.006. The base index is the average price of the fuel cost adjuster for 1989. The AFC is the sum of:

1. Tennessee's CD-6 Commodity Rate and Gas Rate as specified in its FERC tariff, weighted at 25 percent; plus

2. Algonquin's F-1 Commodity Rate as specified in its FERC tariff, weighted at 25 percent; plus

3. The Alberta Average Market Price, multiplied by the Bank of Canada average exchange rate, multiplied by 1.054615, weighted at 50 percent.

The gas purchase agreements with CNRL, Excel, and Remington stipulate that if the information required to calculate any component of the AFC is not available and the parties are unable to agree upon an alternative method of indexing the natural gas commodity price, either party may submit the matter to arbitration under the terms of the agreements. DPA's purchase agreement with Columbia, however, stipulates that if information necessary to calculate any component of the AFC is not available and the parties are unable to agree upon an alternative method of indexing the commodity price then, at Columbia's option, the ACC for any month thereafter shall be equal to the Alberta Average Market Price for that month. If Columbia gives Notice that it intends to exercise this option, DPA can terminate the purchase agreement two years after the delivery of such notice.

The gas purchase agreements contain no take-or-pay provisions. Each gas purchase agreement provides that if DPA fails to take the "triggering quantity" (generally defined under the Agreements as a quantity of gas equal to 70% of the actual average daily contract quantities) during any contract year after the first contract year, the supplier under that Agreement may upon notice reduce DPA's daily and total contract quantities by the difference between the triggering quantity and the average deliveries actually taken. In addition, under the Columbia Agreement, Columbia may unilaterally elect to reduce the daily contract quantity once every five years coincident with the date for price renegotiation. However, Columbia must advise DPA of this reduction in the daily contract quantity at least two years prior to each price renegotiation date. All four purchase agreements contain warranty provisions which seek to ensure the continued firm delivery of gas to DPA by requiring the sellers to compensate DPA for additional costs incurred if it became necessary for DPA to obtain alternative supplies. The sellers must reimburse DPA an amount equaling the difference between the cost of the replacement gas and the cost that DPA would have incurred had the sellers delivered the shortfall amounts under the terms of the agreements.

In support of its application, DPA states that the natural gas that it seeks to import represents the best overall supply arrangement that it could secure on a long-term, firm supply basis. DPA further claims that after an extensive search for domestic supply, it could not secure an available domestic source of supply at a price and on terms that would permit economically feasible operation of the Project. DPA alleges that the gas purchase agreements afford it direct access to major, secure sources of natural gas. Each of the suppliers are required under their respective Agreements with DPA to dedicate sufficient reserves to meet the daily and total contract quantities.

DPA maintains that the proposed imports are not inconsistent with the public interest since the terms and conditions of the Agreements are flexible with regard to both volume and price, insuring the long-term competitiveness of the imported gas to alternative fuels in New England, including gas from domestic producers. Accordingly, DPA states that its import proposal will further the Secretary of Energy's policy goal to reduce trade barriers by encouraging competition between U.S. and Canadian gas suppliers and purchasers.

A notice of the application was published in the Federal Register on November 13, 1990, inviting protests, motions to intervene, notices of intervention and comments to be filed by December 13, 1990. 1/ No comments or motions to intervene were received.

II. DECISION

The application filed by DPA 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/ The determination is guided by DOE's natural gas import policy guidelines. 3/ Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test. DOE also considers, particularly in a long-term arrangement, need for and the security of the imported gas supply. Further, the National Environmental Policy Act of 1969

1/ 55 FR 47388.

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

[3] 49 FR 6684, February 22, 1984.

(NEPA) requires DOE to examine the environmental effects of gas import authorizations. 4/

A. General Considerations A. General 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.

DPA's uncontested import proposal, as a whole, is competitive. DOE has reviewed the gas contracts and is satisfied that their provisions are sufficiently flexible to permit pricing and volume adjustments as required by market conditions. The purchase agreements allow for the commodity component of the price to be adjusted monthly to reflect changing market conditions and also allow both DPA and its suppliers to renegotiate the pricing provisions of the contracts every fifth contract year. Further, the contracts provide for arbitration if the parties are unable to arrive at a mutually agreeable renegotiated price.

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. On the basis of the record before DOE at this time, DPA's proposed import arrangement has been found to be

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

competitive and, therefore, can be presumed to be needed.

Finally, the security of this Canadian gas supply has not been disputed. Natural gas has been imported from Canada for many years and there has been no instance of a major supply interruption that would call into question DPA's suppliers reliability as gas suppliers to this country. Reliability of the Canadian supplies is further supported by the contractual warranty obligations under which DPA's suppliers must deliver the daily firm contract quantities or suffer the penalty of having to reimburse DPA for any additional costs incurred in obtaining alternate supplies of gas to replace the delivery shortfall. Accordingly, DOE preliminarily finds that this import will not lead to any undue dependence on an unreliable source of supply nor otherwise compromise the energy security of the nation over the term of the proposed import.

B. Environmental Analysis

B. Environmental Analysis

DPA's import proposal requires issuance of several major permits and authorizations before the project can proceed, including FE's import authorization and FERC's authorization of the new transportation facilities. FERC has recently completed environmental assessments (EAs) on the pipelines and compressor stations to be constructed by Tennessee, Algonquin, and Iroquois to provide DPA and three other electric generation plants in New York and Massachusetts with imported natural gas. When the DOE's review and analysis of the FERC environmental documentation is completed, DOE will and take the appropriate action to complete its NEPA responsibilities. A final decision on DPA's application is therefore conditioned on completion of DOE's environmental reviews.

This conditional order makes preliminary findings and indicates FE's determination at this time on all but the environmental matters in this proceeding. The issues addressed herein regarding the import of natural gas will be reexamined at the time the environmental review is completed. The results of that reexamination will be reflected in the final opinion and order.

C. Conclusion C. Conclusion

After taking into consideration all of the information in the record of this proceeding, I find that authorizing DPA to import up to 16,000 Mcf per day of natural gas from Canada during the period beginning on the initial firm delivery date as defined in DPA's Purchase Agreements and extending for twenty years from that date is not inconsistent with the public interest. This approval is conditioned upon issuance of a final DOE/FE order after preparation of the EA and DOE's completion of its NEPA responsibilities.

ORDER

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

A. Subject to the condition in Ordering Paragraph B, Dartmouth Power Associates Limited Partnership is authorized to import from Canada, at a point on the international border near

Iroquois, Ontario, up to 16,000 Mcf per day of natural gas in accordance with the provisions of its Purchase Agreements with Canadian Natural Gas Resources Limited, Columbia Gas Development of Canada, LTD, Excel Energy Inc., and Remington Energy Ltd.

B. The authorization in Ordering Paragraph A is conditioned upon issuance of a final opinion and order after review of the environmental assessments prepared by FERC and the completion by DOE of its National Environmental Policy Act (NEPA) responsibilities.

C. The term of this authorization, reflecting the conditions of DPA's Purchase Agreements, shall be for a period of twenty years beginning on the initial firm delivery date as defined in those Agreements.

D. Within two weeks after first delivery, DPA shall provide written notification to the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, of the date that deliveries of natural gas imports authorized in Ordering Paragraph A above occurred.

E. With respect to the natural gas imports authorized by this Order, the applicant shall file with the Office of Fuels Programs, within 30 days following each calendar quarter, quarterly reports indicating whether imports of natural gas have been made, and if so, giving by month and by supplier, the total volume of the imports in Mcf and the average price per MMBtu at the international border. The reports shall also provide the details of each transaction, including the per unit (MMBtu) demand/commodity/reservation charge breakdown of the contract price. 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.

F. The authorization granted in Ordering Paragraph A is subject to the conditions stated in Ordering Paragraph B, the resolution of which may result in further conditions being imposed in subsequent proceedings in this case. DPA shall be bound by any Opinion and Order issued in subsequent proceedings.

Issued in Washington, D.C., on May 27, 1992.

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