

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

IROQUOIS GAS TRANSMISSION, L.P.)
_____)

FE DOCKET NO. 92-15-NG

ORDER GRANTING BLANKET AUTHORIZATION
TO IMPORT NATURAL GAS FROM CANADA
AND GRANTING INTERVENTION

DOE/FE OPINION AND ORDER NO. 636

JUNE 12, 1992

I. BACKGROUND

On February 7, 1992, Iroquois Gas Transmission System, L.P. (Iroquois), 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 blanket authorization to import near Waddington, New York, up to one billion cubic feet of natural gas from Canada for a two-year period beginning on the date of the first delivery. Iroquois, a Delaware limited partnership comprised of 12 U.S. and Canadian energy companies, is a transportation-only pipeline company. It owns and operates a 370-mile natural gas pipeline that begins at the U.S. Canada border near Waddington, New York, and extends through the states of New York and Connecticut, to South Commack, New York. Any gas that Iroquois imports under the requested authorization would be used solely for line pack on its pipeline system and would not be resold to Iroquois' shippers or any other entity. 1/

Although the specific suppliers are not identified in its application, Iroquois asserts that it would make spot-market purchases under the proposed authorization from reliable Canadian natural gas producers and that the contractual terms would be market-responsive and competitive. Iroquois notes that it may frequently be able to obtain the supplies it needs for line pack in the United States and that it is seeking import authority only

1/ Line pack is the volume of gas that must be maintained within a pipeline at all times to maintain pressure and insure uninterrupted flow or transportation of natural gas through the pipeline.

to obtain the flexibility to purchase gas from Canadian suppliers when they provide the most competitive terms.

II. INTERVENTION AND COMMENTS

A notice of the application was published in the Federal Register on March 25, 1992, inviting protests, motions to intervene, notices of intervention and comments to be filed by April 24, 1992. 2/ A joint motion to intervene was filed by the Independent Petroleum Association of America and the State Producer Associations 3/, referred to herein as Producers. In their motion, Producers request that DOE dismiss the application, or in the alternative, set the matter for a trial-type hearing after permitting adequate discovery. A motion to intervene in support of Iroquois application was filed by ProGas Limited (ProGas). This order grants intervention to Producers and ProGas.

III. DECISION

The application filed by Iroquois 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

2/ 57 F.R. 10348.

3/ The State Producer Associations are California Independent Petroleum Association, California Gas Producers Association, Independent Petroleum Association of Mountain States, Independent Petroleum Association of New Mexico, Louisiana Association of Independent Producers and Royalty

Owners, Panhandle Producers and Royalty Owners Association, and
Texas Independent Producers and Royalty Owners Association.

"will not be consistent with the public interest." 4/ The determination is guided by DOE's natural gas import policy guidelines. 5/ Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test.

A. Producers' Position

In requesting dismissal of the import application, Producers state that due to "unrest and turmoil in the natural gas market at this time, DOE cannot accurately determine the national need for the proposed imports." Further, Producers assert that there are adequate supplies of lower-priced domestic gas available to Iroquois and issuing it a blanket authorization is not in the public interest. Producers also argue that Iroquois' relationship with TCPL, the holder of the largest ownership share of Iroquois and the only pipeline that can be used to deliver gas to the Iroquois system, preclude Iroquois from purchasing this natural gas under legitimate, arms-length, competitive arrangements. Moreover, since Iroquois is a regulated utility that can recover all of its line pack costs from its customers, Producers claim that Iroquois lacks the incentive to negotiate the lowest possible price for its purchases.

Producers request a trial-type hearing to examine Iroquois' need for this gas and to demonstrate the dampening effect the proposed imports will have on domestic drilling. In addition,

4/ 15 U.S.C. Sec. 717b.

5/ 49 FR 6684, February 22, 1984.

the Producers seek discovery to obtain additional data on Iroquois' line pack requirements and to develop data showing that less expensive, domestic natural gas supplies are available.

B. Discussion of the Issues

As stated above, under DOE's policy guidelines, competitiveness of the import is the primary consideration in meeting the NGA section 3 public interest test. The import authorization sought would provide Iroquois with blanket approval, within prescribed limits, to negotiate and transact individual, spot and short-term import arrangements without further regulatory action. Iroquois asserts that each transaction would be voluntarily negotiated and market-responsive. Progas, as a potential supplier of gas to Iroquois, agrees. This establishes a rebuttable presumption in favor of authorizing the import. Simply because the gas would be used by Iroquois for line pack on its system, or the gas would be purchased from Iroquois' affiliates, or there currently is "unrest and turmoil" in the natural gas market, does not imply that the gas will not be competitive. Also, Iroquois' ability to pass through line pack gas costs, and any incentives or disincentives to negotiate low gas prices, is not affected by the origin of the natural gas it purchases. Producers have not made any arguments or submitted any evidence sufficient to rebut Iroquois' assertion that its import proposal is consistent with section 3 of the NGA and DOE's natural gas import policy

guidelines. Therefore, Producers' request to dismiss the application is denied.

Producers also seek a trial-type hearing to demonstrate that the proposed imports would have a dampening effect on domestic drilling. That issue is not relevant and material to DOE's decision on this application. DOE's policy is to encourage competition in the energy marketplace not to insulate any segment of the industry from competition. 6/ In fact, Iroquois' proposal will further the Secretary of Energy's policy goal to reduce trade barriers by promoting a more market-oriented gas trade between the United States and Canada. The other issues raised by Producers for a trial-type hearing have either been fully addressed in this order or are not relevant and material to a decision on the application. Accordingly, Producers request for a trial-type hearing is denied.

Finally, the Producers request discovery to obtain additional data regarding Iroquois' projected demand for line pack and its assumptions used to develop those projections. Producers also request discovery to develop data to demonstrate that less expensive supplies are available to Iroquois from domestic sources and that its rate structure and affiliate relationships would cause Iroquois to purchase Canadian supplies while turning back less expensive domestic supplies. However, Iroquois explained in its application that it is seeking import

6/ See, DOE/FE Opinion and Order No. 368, 1 FE

70,285, November 11, 1991, at 71,216.

authority only to obtain the flexibility to purchase gas from Canadian suppliers when they provide the most competitive terms. Nothing in Iroquois' application, and nothing Producers submitted in their motion to intervene, would suggest otherwise. Further, because any gas imported under the authorization would be used solely for line pack and would not be resold to Iroquois' shippers or to any other entity, the volumes Iroquois proposes to import are presumed to reflect its legitimate line pack requirements. Therefore, Producers request for discovery is denied.

C. Conclusion _____

After taking into consideration all of the information in the record of this proceeding, I find that authorizing Iroquois to import up to one Bcf of natural gas from Canada over a two-year term beginning on the date of first delivery is not inconsistent with the public interest. 7/

ORDER

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

7/ Because the proposed import of gas will use existing 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 an environmental assessment

is not required. See 40 CFR Sec. 1508.4 and 57 FR 15122 (April
24, 1992).

A. Iroquois Gas Transmission System, L.P. (Iroquois) is authorized to import from Canada up to one Bcf of natural gas over a two-year term beginning on the date of first delivery.

B. This natural gas may be imported at Iroquois's international border facilities near Waddington, New York.

C. Within two weeks after deliveries begin, Iroquois 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 the first delivery of natural gas authorized in Ordering Paragraph A above occurred.

D. With respect to the 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 purchases of imported natural gas have been made, and if so, giving by month, 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 names of the seller(s), estimated or actual duration of the agreements, transporter(s), and point(s) of entry. 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 of this order is due not later than July 30, 1992,

and should cover the period from the date of this order until the end of the current calendar quarter June 30, 1992.

F. The joint motion to intervene filed by the Independent Petroleum Association of America and the State Producer Associations and the motion to intervene filed by ProGas Limited are hereby granted provided that their participation shall be limited to matters specifically set forth in their motions to intervene and not herein denied, and that admission of these intervenors shall not be construed as recognition that they are aggrieved because of any order issued in this proceeding.

G. The requests of the Independent Petroleum Producers Association and the State Producers Association for dismissal of Iroquois' application and their alternative request for a trial-type hearing and discovery procedures are denied.

Issued in Washington, D.C., on June 12, 1992.

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