

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

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PEPPERELL POWER ASSOCIATES)	
LIMITED PARTNERSHIP)	DOCKET NO. 92-112-NG
_____)	

ORDER GRANTING LONG-TERM AUTHORIZATION TO IMPORT
NATURAL GAS FROM CANADA, VACATING EXISTING CONDITIONAL
AUTHORIZATION, AND GRANTING INTERVENTIONS

DOE/FE OPINION AND ORDER 698

OCTOBER 23, 1992

I. BACKGROUND

On August 24, 1992, Pepperell Power Associates Limited Partnership (PPA) filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) seeking to amend its application to import natural gas from Canada filed with the Economic Regulatory Administration (ERA) in ERA Docket No. 87-71-NG. PPA is a Massachusetts limited partnership with its principal place of business in Syracuse, New York. In the amended application filed in FE Docket No. 92-112-NG, PPA seeks authorization under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-12, to import up to 9,700 Mcf per day of Canadian natural gas from Western Gas Marketing Limited (WGML) over a period of ten years beginning November 1, 1992. The gas would fuel an existing 39-megawatt, cogeneration facility owned and operated by PPA in Pepperell, Pennsylvania. Electric output at the plant is sold to Commonwealth Electric Company.

Briefly, the history of this case is as follows. DOE issued Opinion and Order No. 275 (Order 275) on October 25, 1988, which conditionally authorized PPA to import up to 9,795 Mcf per day and up to a total of 53,627,625 Mcf of Canadian natural gas from TransCanada PipeLines Limited (TransCanada) over a 15-year period. 1/ The arrangement was conditioned on the completion of an environmental review of PPA's cogeneration plant which had not yet been constructed, and pipeline facilities proposed by Tennessee Gas Pipeline Company. Tennessee's proposed facilities

1/ 1 ERA 70,844.

involved expanding capacity on its existing Niagara spur loop line at the U.S./Canada border near Niagara Falls, New York, necessary to deliver new Canadian gas supplies to the U.S. Northeast for cogeneration facilities and local distribution companies. PPA and TransCanada subsequently failed to finalize a purchase agreement for that import. The PPA plant has been in service since March 28, 1990, using interim supplies of domestic gas. Also, Tennessee's planned system expansion was approved by the Federal Energy Regulatory Commission (FERC) and those facilities are now in place. 2/

Because the facts and environmental issues currently before DOE are materially different from those discussed in Order 275, that order has been rendered meaningless. Therefore, the proceeding in Docket No. 87-71-NG was terminated at the time this proceeding was commenced and, as part of this order, DOE is vacating Order 275.

In recent months, PPA has been negotiating a new gas purchase contract with Western Gas Marketing Limited (WGML) to import up to 9,700 Mcf of gas per day from Canada over a ten-year period. Pending conclusion of this long-term supply agreement, PPA and WGML executed a letter agreement dated July 30, 1992,

2/ See Niagara Import Point Project (NIPP) Phase II Order, 51 FERC 61,113 (May 2, 1990), reh'g 55 FERC 61,483 (June 21, 1991); NIPP Phase III Order, 52 FERC 61,257 (September 13, 1990), reh'g 55 FERC 61,484 (June 21, 1991); Iroquois/Tennessee Project Order, 53 FERC 61,194 (November 14, 1990), reh'g 54 FERC 61,103 (February 4, 1991); Iroquois/Tennessee Project Phase II Order, 57 FERC 61,047 (October 9, 1991), reh'g 59 FERC 61,094 (April 28, 1992); and Electric Generation Transportation

Project Order, 59 FERC 61,199 (May 20, 1992).

with respect to a five-year interim supply arrangement. The proposed "Interim Gas Sales Contract" would begin November 1, 1992, and continue through October 31, 1997, unless at an earlier date: (1) the parties execute the new long-term contract; (2) PPA terminates the interim contract after the second contract year; or (3) PPA extends the contract an additional five-year period.

The Interim Gas Sales Contract provides for firm deliveries of a maximum daily quantity (MDQ) of 9,700 Mcf and up to 3.5 Bcf per year, for the first two contract years and interruptible deliveries of the same amounts for the final three contract years. After the initial period, the contract stipulates that PPA may extend the term by five years under the same contractual provisions.

The import price at Niagara Falls would be \$1.70 (U.S.) per MMBtu for the first and second contract years, inclusive of all Canadian transportation costs. For the third, fourth, and fifth contract years, PPA will pay each month the sum of: (1) the simple average of (a) the average Alberta spot price published in "Canadian Natural Gas Focus"; (b) the average Alberta spot price published in "Canadian Gas Price Reporter"; and (c) the average price for Alberta gas sold on a one-year basis published in "Canadian Gas Price Reporter"; and (2) the costs of transportation on TransCanada.

A notice of the August 24, 1992, application was published in the Federal Register on September 16, 1992, inviting

protests, motions to intervene, notices of intervention and comments to be filed by October 16, 1992. 3/ A motion to intervene without comment or request for additional procedures was filed by Great Lakes Transmission Limited Partnership. WGML filed a motion to intervene supporting PPA's application. This order grants intervention to both movants.

II. DECISION

The application filed by PPA 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." 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. DOE also considers, particularly in a long-term arrangement, need for and 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

3/ 57 FR 42749.

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

5/ 49 FR 6684, February 22, 1984.

and availability of competing alternative fuels, including domestic natural gas.

PPA's uncontested import proposal, as a whole, is competitive. DOE has reviewed PPA's gas purchase agreement with WGML and is satisfied that its provisions are sufficiently flexible to permit pricing and volume adjustments as required by market conditions. After an initial two-year fixed-price of \$1.70 (U.S.) per MMBtu, the commodity component of the price would be adjusted monthly to reflect changing market conditions. In addition, there are no take-or-pay requirements or reservation charges in the contract. Further, PPA has the option to terminate the contract after two years or to extend it, after five years, for an additional five-year term under the same pricing provisions.

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, PPA's proposed import arrangement has been found to be competitive and, therefore, can be presumed to be needed.

The security of PPA's 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 WGML's reliability as a natural gas exporter to this country. Reliability of the Canadian supplies is further supported by the contractual warranty obligations under which PPA's suppliers must deliver the

daily firm contract quantities or suffer the penalty of having to reimburse PPA for any additional costs incurred in obtaining alternate supplies of gas to replace the delivery shortfall. Accordingly, DOE 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.

After taking into consideration all of the information in the record of this proceeding, I find that authorizing PPA to import up to 9,700 Mcf per day of natural gas from Canada commencing November 1, 1992, through October 31, 2002, in accordance with the provisions of its proposed interim gas sales agreement with WGML is not inconsistent with the public interest. 6/

ORDER

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

A. Pepperell Power Associates Limited Partnership (PPA) is authorized to import from Canada near Niagara Falls, New York, up to 9,700 Mcf per day and up to a total of 3.5 Bcf of natural gas in accordance with the provisions of its draft Interim Gas Sales

6/ 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

neither an environmental impact statement nor an environmental

assessment is required. See 40 C.F.R. 1508.4 and 54 F.R. 15122
— (April 24, 1992).

Contract with Western Gas Marketing Limited as described in the application and discussed in this Opinion and Order.

B. The term of this authorization shall begin November 1, 1992, and extend through October 31, 2002.

C. Within two weeks after deliveries begin, PPA 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 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, 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) commodity/transportation 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.

E. The first quarterly report required by Ordering Paragraph D above is due no later than January 30, 1993, and should cover the period from November 1, 1992, until the end of the current calendar quarter, December 31, 1992.

F. DOE/ERA Opinion and Order No. 275, issued October 25, 1988, is hereby vacated.

G. The motions to intervene filed by Great Lakes Gas Transmission Limited Partnership and Western Gas Marketing Limited, as set forth in this Opinion and Order, 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 might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., on October 23, 1992.

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