Cited as "1 FE Para. 70,310"

Consumer Power Company, Poco Petroleum, Inc. (FE Docket Nos. 88-38-NG, 88-50-NG), April 4, 1990.

DOE/FE Opinion and Order No. 390

Order Transferring an Authorization to Import Natural Gas from Canada, Approving Amendments, and Granting Intervention

I. Background

On January 12 and 16, 1990, as supplemented on February 6, 8, and 20, Consumers Power Company (Consumers) and Poco Petroleum, Inc. (Poco), filed applications with the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA) to transfer an import authorization. Consumers and Poco request that Poco's authorization to import Canadian gas for sale to Consumers, previously granted to Poco in DOE/ERA Opinion and Order No. 287 (Order 287) on December 23, 1988, be transferred to Consumers. The requested transfer would increase Consumers' existing import authority granted in DOE/ERA Opinion and Order 284 (Order 284) on December 7, 1988, by 25,000 Mcf per day from 59,000 Mcf per day to 84,000 Mcf per day, and would rescind Poco's existing authority to import gas on behalf of Consumers. The transfer would result in no net change of import volumes.

The import volumes would be delivered at the U.S./Canada international boundary at Emerson, Manitoba, and transported from there to Consumers through the facilities of Great Lakes Gas Transmission Company (Great Lakes) and ANR Pipeline Company (ANR).

Pursuant to letter agreements between Consumers and Poco, a wholly-owned subsidiary of Poco Petroleums Ltd. (Poco Ltd.), a Canadian Corporation, 15,000 Mcf per day of the gas under the requested transfer would continue to be supplied by Poco's parent, Poco Ltd. The remaining 10,000 Mcf per day would be provided by North Canadian Oils, Ltd. (NCO), pursuant to a August 22, 1989, contract between Consumers and NCO.

Under the NCO contract, the reference price is 93 percent of the weighted average cost of gas acquired by Consumers or Michigan Gas Storage Company (MGSC) from interstate pipelines at a 100 percent load factor rate and under firm contracts with a term of not less than two years. The reference price for January 1990, after subtracting the current Great Lakes and ANR transportation charges totaling 52.73 cents per MMBtu, is $2.336 per MMBtu.

According to the applicants, the Poco Ltd. and NCO contracts provide market-responsive pricing mechanisms. The commodity price of the imported gas to Consumers is indexed to percentages that are less than Consumers' cost of gas supplied by interstate pipelines and, according to Consumers, ensures that the price of gas will remain competitive during the contract period ending March 31, 2005. In addition, since the volumes being imported under the proposed transfer of authority remain identical, the applicants state that the need for the gas has already been demonstrated in the applications leading to Orders 284 and 287. The applicants also state that the long-term supply is secure not only because of the proximity of Consumers' system to Canada, but because both the Poco Ltd. and NCO contracts indemnify Consumers against certain costs in obtaining alternative gas supplies in the event of delivery shortfalls.

Consumers and Poco both state that the underlying pricing arrangements found in Consumers' April 29, 1988, natural gas purchase agreement with Poco Ltd. remain substantially the same. The reference price, which encompasses both the demand and commodity charge components to be paid by Consumers, has been adjusted downward to reflect different transportation charges resulting from the change in the point of sale which will now be at the international border near Emerson, Manitoba, rather than "a delivery point(s) on Consumers' own system" in Michigan. Consumers has assumed direct responsibility for the domestic transportation costs of the volumes imported through the existing facilities of Great Lakes' and ANR's pipeline systems. The transportation adjustment reduces the reference price of the imported gas by 52 cents per MMBtu. The Poco Ltd. reference price is 95 percent of the lowest cost of gas acquired by Consumers, or its affiliate, MGSC, from interstate pipelines at a 100 percent load factor rate and under firm contracts with terms of not less than two years. Accordingly, the January 1990 reference price of $2.8993 per MMBtu is reduced to $2.3793 per MMBtu at Emerson.

In support of their amended supply agreement and transfer of import authority, Consumers and Poco maintain that their application does not constitute a request for new authority nor for increased total volumes. The applicants also assert that the net price for purchased gas Consumers will now pay directly to Poco Ltd. is not changed. Lastly, Consumers and Poco state that the restructured import is consistent with the recently enacted U.S.-Canada Free Trade Agreement which is intended to facilitate commerce by creating a single North American trading market.

The DOE issued a notice of the applications on February 26, 1990,1/ inviting protests, motions to intervene, notices of intervention, and comments to be filed by March 16, 1990. A motion to intervene without comment was received by Great Lakes. This order grants intervention to Great Lakes.

II. Decision

The applications filed by Consumers and Poco have 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 the 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. Need for the import and security of supply are also considerations in long-term import arrangements.

The applicants' uncontested proposal to transfer import authority and substitute the NCO contract for a portion of the import volumes is consistent with section 3 of the NGA and the DOE policy guidelines. The guidelines direct DOE to look for, as indicia of competitiveness, flexible contract arrangements which permit the parties to respond to changing market conditions over the life of the import. Consumers' supply arrangements with Poco Ltd. and NCO provide such flexibility. The Poco Ltd. monthly reference price will be 95 percent of the lowest cost of gas acquired by Consumers or its affiliate, MGSC, from interstate pipelines at 100 percent load factor for firm contracts two years or greater. For NCO, the monthly reference price shall be 93 percent of the weighted average cost of gas incurred by Consumers or MGSC for supplies purchased from interstate pipelines under firm contracts of two years or greater at 100 load factor. Accordingly, both contracts provide market-responsive pricing mechanisms indexed to competing gas supplies, thus assuring these contracts meet the DOE's guidelines for competitiveness. Further, if either Poco Ltd. or NCO fail to deliver up to 90 percent of daily contract quantities (in any 120 day period) for reasons other than "force majeure", Consumers may elect to reduce its daily takes by providing a cure notice.

In Order 287, the DOE determined that Poco demonstrated a need for the gas which would be imported to supplement Consumers' system supply. The total volumes being imported will remain the same under this transfer of authority, and no other aspect of this restructured arrangement raises any question about need. With respect to the uncontested security of Consumers' long-term Canadian gas supply, the FE notes that under the DOE policy guidelines, security of supply may be demonstrated by the historical reliability of the supplier. 4/ Canada has long been a secure source of supply, and in this case, TransCanada PipeLines Limited, NOVA, ANR and Great Lakes have fully demonstrated their long-term reliability as transporters.

After taking into consideration all of the information in the record of this proceeding, I find that transferring Poco's authority to import up to 25,000 Mcf per day of Canadian gas granted in Order 287 to Consumers, from the date of issuance through March 31, 2005, in accordance with Consumers' gas purchase agreements with Poco Ltd. and NCO, is not inconsistent with the public interest.

ORDER

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

A. The natural gas import authorization previously granted to Poco Petroleum, Inc., in Ordering Paragraph A of DOE/ERA Opinion and Order No. 287 (Order 287), issued December 23, 1988, to import up to 25,000 Mcf of Canadian gas per day is hereby transferred to Consumers Power Company. This authority shall become effective from the date of issuance of this order through March 31, 2005.

B. The authority to import up to 25,000 Mcf granted to Poco Petroleum under Order 287 is hereby terminated effective the date of issuance of this order.

C. Within two weeks after deliveries begin, Consumers shall notify the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-5O, 1000 Independence Avenue, S.W., Washington, D.C., 20585, in writing of the date that the first import authorized in Ordering Paragraph A above occurs.

D. With respect to the natural gas authorized to be imported by this order, Consumers shall file with the Office of Fuels Programs, within 30 days following each calendar quarter, quarterly reports showing by month, the quantities of natural gas in Mcf imported under this authorization, and the average price per MMBtu paid for those volumes at the international border. The price information shall include a demand-commodity charge breakdown on a monthly and per unit (MMBtu) basis, as well as the average delivered price at the Canadian border per MMBtu.

E. The motion to intervene as set forth in this Opinion and Order is hereby granted, provided that participation of the intervenor shall be limited to matters specifically set forth in its motion to intervene and not herein specifically denied, and that admission of such intervenor shall not be construed as recognition that it may be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., on April 4, 1990.

--Footnotes--

1/ 55 FR 7368, March 1, 1990.

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

3/ 49 FR 6684, February 22, 1984.

4/ See supra note 4, at 6687.