Cited as "1 FE Para. 70,336"

Falcon Seaboard Gas Company (FE Docket No. 89-86-NG), July 20, 1990.

DOE/FE Opinion and Order No. 410

Conditional Order Granting a Long-Term Authorization to Import Natural Gas from Canada and Granting Intervention

I. Background

On December 1, 1989, Falcon Seaboard Gas Company (FSGC) filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) pursuant to section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127 for authorization to import up to 16 MMcf per day or up to 5.84 Bcf of Canadian natural gas annually over a fifteen-year period beginning on the date of first delivery. The imported gas would be used to fuel a proposed 79-megawatt (MW) cogeneration plant to be located near North East, Pennsylvania. The imported gas would be transported from the U.S./Canadian border near Lewiston, New York, to East Aurora, New York, via a new loop to be added to Tennessee Gas Pipeline Company's (Tennessee) existing Niagara Spur Line. The gas would be transported from East Aurora, New York, to North East, Pennsylvania, via the existing pipeline facilities of National Fuel Supply Corporation (National). The proposed loop would be constructed and owned by National, Tennessee, CNG Transmission Corporation and Texas Eastern Transmission Corporation (Texas Eastern). In addition, some local gas lines would be installed to move the gas from National's facilities to the proposed cogeneration plant.

FSGC is an affiliate of Northern Consolidated Power, Inc. (NorCon) and of FSC Resources Limited (FSC). NorCon would own and operate the proposed cogeneration facility to be served by FSGC. The proposed cogeneration facility would be a qualifying facility under section 201 of the Public Utilities Regulatory Policies Act of 1978 (PURPA). FSGC would import the gas from FSC who, in turn, would purchase the gas from Western Gas Marketing Limited (WGML) or from substitute suppliers if the gas is available at more competitive prices.

Under the terms of the gas purchase agreement between FSGC and FSC dated November 28, 1989, the price which FSGC would pay to FSC for the imported gas would consist of a demand charge and a commodity charge. The demand charge would consist of the sum of a negotiated fixed amount based on volumes purchased, the average monthly demand charge which WGML must pay the NOVA

Corporation of Alberta for transportation of the gas and the monthly amounts paid by FSC to TransCanada for transportation of the gas. The commodity charge would be a function of the weighted average netback price of gas sales by WGML to local utilities in eastern Canada for high priority customers plus five cents (Canadian) less the daily demand charge paid to NOVA and less the daily amounts payable to TransCanada for transportation of the gas. Under this pricing formula, FSGC estimates that the border price of the gas for November 1989, if deliveries had taken place then, would have been $2.58 per MMBtu. The estimated demand charge for November 1989 was 89 cents calculated as follows: the average demand charge paid to NOVA of 12 cents per MMBtu plus a negotiated demand charge of 21 cents per MMBtu and plus TransCanada's demand charge for transportation of the gas of 56 cents. The estimated commodity charge for November 1989, consisting of the sum of the commodity and fuel charges FSC would pay WGML and TransCanada if gas had been flowing then, was $1.69 per MMBtu.

The FSGC/FSC contract provides that FSGC may direct FSC to reduce maximum contract quantities in FSC's gas purchase agreement with WGML and to substitute gas reserves or gas supplies should they be more competitively priced.

In support of its application, FSGC asserts that the imported gas would be competitively priced because FSGC and its affiliates would be seller, purchaser and end-user of the gas and would suffer the economic losses that could arise from uncompetitive gas prices. Further, FSGC asserts that since the commodity price it would have to pay for the gas is a function of the average netback price for gas sales by WGML to utilities in Eastern Canada for high priority customers, the price of the gas should remain at competitive levels. Should more competitively priced gas be available elsewhere, FSGC states that it has the flexibility under the gas purchase contract with FSC to direct FSC to purchase such gas in lieu of gas from WGML.

To ensure that adequate supplies of gas are available to meet the needs of the proposed cogeneration facility when it begins operation, the gas purchase agreement which the exporter, FSC, has with WGML requires WGML to maintain adequate supply sources and permits FSC to purchase its own gas reserves or substitute gas supplies if WGML's gas supply pool falls below certain levels provided for in the FSC/WGML contract.

A notice of the application was issued January 31, 1990, inviting protests, motions to intervene, notices of intervention, and comments to be filed by March 12, 1990.1/ Great Lakes Gas Transmission Company filed a motion to intervene without comment and WGML filed a motion to intervene in support

of the application. Texas Eastern filed a motion to intervene without comment one day late. No party would be adversely affected by granting the late motion to intervene nor would it delay the proceeding and this order therefore grants intervention to all movants.

II. Decision

The application of FSGC 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 DOE is guided by its natural gas import policy guidelines,3/ under which the competitiveness of the import in the markets served is the primary consideration in meeting the public interest test. The DOE also considers, particularly in long-term arrangements, need for and the security of the imported gas supply. In addition, the National Environmental Policy Act of 1969 (NEPA) requires DOE to consider the environmental effects of natural gas import authorizations.

A. General Considerations

FSGC asserts that the imported gas would be competitive because the commodity charge for the gas would be a function of the average netback price for gas sales by WGML to utilities in Eastern Canada for high priority customers. Further, under the terms of the FSGC/FSC gas purchase contract, FSGC can direct FSG to purchase gas from suppliers other than WGML if the gas is more competitively priced. In addition, FSGC states that since FSGC and its affiliates would be seller, purchaser and end-user of the gas, they would suffer the economic losses that could arise if the gas was not competitively priced. Accordingly, on the basis of the record before the agency at this time, DOE finds that the proposed long-term gas supply arrangement is competitive and is sufficiently flexible to remain competitive over the term of the import authorization requested.

The preliminary finding of competitiveness gives rise to a presumption of need for the gas which is uncontested in this proceeding and is supported by the fact that the proposed cogeneration plant will create new demand when it begins operations. Therefore, DOE preliminarily finds that FSGC has shown that the gas would be needed.

There is no dispute as to the security of the Canadian gas supply or the reliability of the Canadian gas supplier. Under FSC's contract with WGML, FSC may purchase its own gas reserves or substitute gas supplies if WGML's gas

supply pool falls below certain prescribed levels. Accordingly, on the basis of the record before it at this time, DOE finds that the Canadian gas supply is and will remain secure.

B. Environmental Determination

FSGC's import proposal requires the issuance of several major permits and authorizations before the project can proceed, including FE's import authorization under section 3 of the NGA and the Federal Energy Regulatory Commission's (FERC) authorization under section 7 of the NGA to construct and operate new facilities to transport the natural gas. The FERC (FERC Docket No. CP90-920-000) has the lead in preparing the environmental analysis required to assess the impacts of the new facilities related to this import project.

When the appropriate environmental documentation is completed by the FERC, the DOE will independently review the analysis and take the appropriate action to complete the DOE's NEPA responsibilities. The FE will then reconsider this conditional order and issue an appropriate final opinion and order. The approval of this import of natural gas is therefore conditioned on completion of an environmental review and DOE's responsibilities under NEPA.

This conditional order makes preliminary findings and indicates to the parties the FE's determination at this time on all but the environmental issue in this proceeding. All parties are advised that the issues addressed herein regarding the import of natural gas will be reexamined at the time of the DOE's review of the FERC NEPA analysis. The results of that reexamination will be reflected in the final opinion and order.

C. Conclusion

After taking into consideration all the information in the record of this proceeding, I find that granting FSGC conditional authority to import up to 16 MMcf per day or up to 5.84 Bcf of Canadian natural gas annually over a period of fifteen years beginning on the date of first delivery, in accordance with the gas import arrangement described in the application, is not inconsistent with the public interest.

ORDER

For the 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, Falcon Seaboard Gas

Company (FSGC) is authorized, commencing on the date of first delivery, to import up to 16 MMcf per day or up to 5.84 Bcf annually of Canadian natural gas over a term of 15 years under the import arrangement described in FSGC's application.

B. The authorization in Ordering Paragraph A is conditioned upon entry of a final opinion and order after review by the Department of Energy (DOE) of the environmental documentation being prepared by the Federal Energy Regulatory Commission (FERC) and the completion by the DOE of its National Environmental Policy Act responsibilities.

C. FSGC shall notify the Office of Fuels Programs, Fossil Energy, Room 3F-056, 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 within two weeks after deliveries begin.

D. FSGC shall file with the Office of Fuels Programs, within 30 days following each calendar quarter, quarterly reports showing by month, and by contract, the total volume of natural gas imports in Mcf and the average purchase price per MMBtu at the international border. The monthly pricing information shall include a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis.

E. The motions to intervene, as set forth in this Opinion and Order, are hereby granted, provided that participation of such intervenors shall be limited to matters specifically set forth in their motions to intervene and not herein specifically denied, and that the admission of such intervenors shall not be construed as recognition that they might be aggrieved because of any order issued in these proceedings.

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

Issued in Washington, D.C., July 20, 1990.

--Footnotes--

1/ 15 FR 4476, February 8, 1990.

2/ 55 U.S.C. 717b.

3/ 49 FR 6684, February 22, 1984.