Cited as "1 FE Para. 70,375"

Selkirk Cogen Partners, L.P. (FE Docket No. 89-55-NG), November 15, 1990.

DOE/FE Opinion and Order No. 447

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

I. Background

On August 11, 1989, JMC Selkirk, Inc., (JMC Selkirk), 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 long-term authorization to import up to 23,000 Mcf per day of natural gas from Canada. The gas would be purchased from Paramount Resources, Ltd. (Paramount), a Canadian corporation.

On February 2, 1990, Selkirk Cogen Partners, L.P. (Selkirk Cogen), a new Delaware limited partnership formed by JMC Selkirk and Makowski Selkirk, Inc., both wholly-owned subsidiaries of J. Makowski Company Inc., and by Old State Management Corporation, notified FE it would assume JMC Selkirk's import request. Selkirk Cogen submitted a substantively similar but more detailed gas purchase contract executed and effective on December 15, 1989, with Paramount to supersede the gas purchase agreement previously furnished by JMC Selkirk.

On April 10, 1990, Selkirk Cogen furnished to FE a letter agreement between itself and Paramount dated March 26, 1990, regarding technical revisions to their December 15, 1989, contract. On July 25, 1990, Selkirk Cogen made an additional filing with FE submitting three letter agreements between itself and Paramount, concerning further technical changes to their gas purchase contract. The first letter agreement, dated June 9, 1990, made minor changes to the timing and use of the renegotiation and arbitration clauses; the second letter agreement, dated June 11, 1991, corrected the indemnity appended as Exhibit C of the gas purchase contract; and the third letter agreement, dated June 19, 1990, amended the indemnity and supplemented the agreement.

According to the application, as amended, Selkirk Cogen will develop, construct, own, and operate a gas-fired cogeneration plant at the site of the plastics manufacturing facility of the General Electric Company (GE) located on an industrial reservation in Selkirk, New York. The cogeneration plant will be constructed in two stages, an initial unit scheduled to commence commercial

operation in late 1991 with a capacity of approximately 79 megawatts (MW), and a second unit planned for commercial operation in late 1993 with a capacity of approximately 250 MW. The requested import authority only concerns the gas supply for the initial unit (the plant).

The electric output of the plant is to be sold to the Niagara Mohawk Power Corporation (Niagara Mohawk) under a 20-year power sales agreement. The New York Public Service Commission (NYPSC) approved the power sales agreement in 1988. A December 1989 amendment of that power sales agreement is also expected to be approved by the NYPSC. The steam output of the plant is to be sold to GE under a 20-year agreement. It is anticipated that GE will use approximately 200,000 pounds of steam per hour.

Selkirk Cogen requests long-term authorization to import up to a maximum daily quantity (MDQ) of 23,000 Mcf of gas per day from Paramount beginning on an interruptible basis for a testing period limited to six months and thereafter on a firm basis for 15 years commencing upon commercial operation. The contract term could be extended for an additional five years subject to certain authorizations.

Iroquois Gas Transmission System (Iroquois) has applied to the Federal Energy Regulatory Commission (FERC) under section 7 of the NGA for authority to construct a pipeline and to transport gas, including the gas supply for the initial unit (FERC Docket No. CP89-634-001). Selkirk Cogen's application projects the initial 100 percent load factor rate to be charged by Iroquois to be about $0.43 per MMBtu.1/

Tennessee Gas Pipeline Company (Tennessee) has applied to FERC for authority to construct additional facilities for its part of the transportation of the gas and to transport such volumes (FERC Docket No. CP89-629-001). The initial 100 percent load factor demand rate to be charged by Tennessee for transporting the gas is projected to be about $0.19 per MMBtu.2/

The delivery point for the gas will be the interconnection between the pipeline system of NOVA Corporation (NOVA) of Alberta, Canada, and TransCanada PipeLines Limited (TransCanada) near Empress, Alberta, Canada. The gas will be transported by TransCanada and then by Iroquois and Tennessee to a 2.2 mile pipeline connected to the plant.

The contract provides that, upon the commencement of firm deliveries, Selkirk Cogen will pay Paramount a two-part rate consisting, in any month, of the sum of a monthly demand charge (MDC) and a commodity charge (CC). The MDC

shall consist of the product of the average of the MDO on each day of such month, and the monthly demand rate (MDR), which is,equal to the monthly demand charge paid by Paramount for deliveries by NOVA to Empress, Alberta, Canada, in the month. The CC per MMBtu of delivered gas each month will be an amount equal to the Adjusted Base Price (ABP) (initially $1.60/MMBtu), less the demand charge (the MDR multiplied by 12 and divided by 365).

The ABP is subject to monthly adjustments to reflect changes in a fossil fuel index comprised generally of (a) No. 6 fuel oil and (b) the gas cost component of CNG Transmission's RQ rate schedule, weighted in proportion to Niagara Mohawk's actual use of each fuel, provided that in no event will the gas component be less than one-third of the index.

Prior to commencement of firm deliveries, the price for interruptible purchases during the test phase will be a commodity price consisting only of the CC as determined if the demand charge were equal to zero.

Except for the MDC, which is not subject to change by renegotiation or arbitration, either party by written notice may require annual renegotiation of the price provisions of the contract. If renegotiation results in agreement upon any change to the price provisions, such change(s) will become effective on the date agreed to by the parties, subject to the receipt of all necessary governmental and regulatory approvals.

If renegotiation of the price provisions does not result in agreement, either party may require arbitration of the price or the method of making adjustments. The price and the method of making adjustments will not be subject to arbitration more than once every year thereafter. The purpose of any arbitration with respect to the price of natural gas service or the method of making adjustments, will be to create a price that will produce Alberta net-backs comparable to average net-backs received by Alberta producers under comparable long-term gas supply contracts, provided that such commodity price and method of making adjustments are likely to result in a commodity price which allows Selkirk Cogen's facility to be economically dispatched on-line at least 7,446 hours in any calendar year.

A notice of the initial application was issued on November 28, 1989, inviting protests, motions to intervene, notices of intervention, and comments to be filed by January 4, 1990.3/ A motion to intervene without substantive comment or request for additional procedures was filed by Niagara Mohawk. This order grants intervention to this movant.

II. Decision

The application 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/ This determination is guided by the 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. Other considerations in this proceeding include, but are not limited to, need for the gas, security of the imported supply, and the environmental effects of the proposed arrangement.

A. General Policy Considerations

The DOE natural gas policy 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 arrangement should be sufficiently flexible to permit pricing and volume adjustments as required by market conditions and the availability of competing fuels, including domestic natural gas. Selkirk Cogen's uncontested proposed import, as set forth in the application, is consistent with these goals.

Selkirk Cogen's gas purchase contract was negotiated at arms-length and its terms and conditions are sufficiently flexible with respect to both volume and price to assure that the proposed imports will remain competitive for the duration of the agreement. The contract contains make-up provisions and also relieves the applicant of demand charges to the extent that Paramount fails to deliver the gas under the contract. The base price is subject to monthly adjustments based on a fossil fuel index comprised of competing fuels weighted in proportion to the use of each fuel by Niagara Mohawk. Additionally, the contract provides for renegotiation and arbitration of key pricing provisions. Accordingly, on the basis of the record before it, DOE finds that the import is competitive.

Under the policy guidelines, this finding of competitiveness gives rise to a presumption of need. In addition, the proposed volumes of natural gas to be imported by Selkirk Cogen would be used to fuel the initial unit of a gas-fired dispatchable cogeneration plant to be constructed in Selkirk, New York. For these reasons, DOE finds that there is a need for the proposed import.

Selkirk Cogen notes in its application that the most recent Canadian Petroleum Association estimates (December 31, 1988) place total marketable Alberta reserves from conventional producing areas at 59.6 Tcf. The total

requirement for full deliveries under the contract would be .126 Tcf.

Under the contract, Paramount dedicates and commits certain identified reserves exclusively to the performance of the contract, and states that such reserves will be sufficient in quantity and quality for the full term of the contract. Furthermore, no party has argued that Paramount's reserves are not secure. Therefore, DOE finds that security of supply has been established and that the 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 contract period.

B. Environmental Considerations

Environmental concerns are an important element of DOE's public interest determination. In general, DOE considers environmental issues in the context of the National Environmental Policy Act of 1969 (NEPA).6/ The DOE participated as a cooperating agency during the preparation of, and has adopted, the Iroquois/Tennessee Phase I Pipeline Project Final Environmental Impact Statement (FEIS) issued by the FERC.7/ The FEIS examined the environmental effects of constructing and operating the Iroquois/Tennessee Phase I Pipeline Project, including those facilities that would be used by Selkirk Cogen to implement its proposed import arrangement. The DOE has concluded that the Iroquois/Tennessee Phase I Pipeline Project FEIS is a complete document that complies with the NEPA process and provides an adequate basis to evaluate the environmental aspects of the section 3 public interest determination concerning the import arrangement.

DOE has examined the FEIS and conducted an independent review in order to assess the environmental consequences of granting the proposed import. DOE's findings are discussed in its consolidated Record of Decision (ROD) for the Iroquois/Tennessee Phase I Pipeline Project facilities. The ROD was issued in conjunction with this and other Iroquois/Tennessee Phase I Pipeline Project related orders and is being published in the Federal Register.8/ DOE determined that the anticipated overall adverse physical impacts on the natural environment are relatively minor and can be mitigated, and thus are environmentally acceptable, especially when compared to the substantial benefits to be derived from an import arrangement that will result in additional electrical supplies utilizing natural gas, which is less polluting than alternative fuels.

C. Conclusion

After taking into consideration all the information in the record of

this proceeding, I find that granting Selkirk Cogen authority to import up to 23,000 Mcf per day of Canadian natural gas beginning on an interruptible basis for a six-month testing period, and thereafter on a firm basis for a 15-year period commencing upon commercial operation, 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. Selkirk Cogen Partners, L.P. (Selkirk Cogen), is authorized to import up to 23,000 Mcf of natural gas per day from Paramount Resources Ltd., beginning on an interruptible basis for a six-month testing period, and thereafter on a firm basis over a 15-year term commencing upon commercial operation of cogeneration plant, in accordance with the pricing and other provisions in the gas purchase contract dated December 15, 1989, as described in its application and this Opinion and Order.

B. Within two weeks after deliveries begin, Selkirk Cogen 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 that the first delivery of natural gas under interruptible and under firm service authorized in Ordering Paragraph A above occurs.

C. With respect to the imports authorized by this Order, Selkirk Cogen 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.

D. 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 this intervenor shall not be construed as recognition that it might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., on November 15, 1990.

--Footnotes--

1/ The import application noted that Iroquois' application in FERC Docket No. CP89-634-000 stated that the initial 100 percent load factor rate to be charged by Iroquois was projected to be $0.41/MMBtu.

2/ Tennessee's application in FERC Docket No. CP89-629-000 to transport such volumes projected its initial 100 percent demand rate to be about $0.20 per MMBtu.

3/ 54 FR 50275, December 5, 1989.

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

5/ 49 FR 6684, February 22, 1984.

6/ 42 U.S.C. 4321, et seq.

7/ FERC EIS-0057, June 1, 1990 (DOE EIS-0154).

8/ The ROD was issued under the Council on Environmental Quality Regulations implementing the procedural provisions of NEPA and the DOE's guidelines for compliance with NEPA (52 FR 47662, December 15, 1987).