UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

PUBLIC SERVICE DEPARTMENT, THE CITY OF BURBANK, CALIFORNIA	)	DOCKET NO. 92-36-NG

ORDER GRANTING LONG-TERM AUTHORIZATION TO IMPORT NATURAL GAS FROM CANADA AND GRANTING INTERVENTION

DOE/FE OPINION AND ORDER NO. 691

OCTOBER 23, 1992

I. BACKGROUND

On March 17, 1992, the Public Service Department, City of Burbank, California (Burbank) filed an application with the Office of Fossil Energy of the Department of Energy (DOE), for authorization to import up to 4,817 Mcf per day of natural gas from Canada through October 31, 1999. The application was filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. Burbank will purchase this gas under an October 15, 1990, contract, as amended, with Unigas Corporation (Unigas). Burbank, a municipality organized under the laws of the State of California, purchases natural gas to generate electricity to meet the needs of residential, commercial and industrial customers. Unigas, the marketing subsidiary of Union Energy Inc., a Canadian natural gas producing company, has entered into several contracts with Alberta producers to obtain reliable gas supplies for its sales to Burbank.

Burbank has also signed firm transportation agreements with Pacific Gas Transmission (PGT) and Pacific Gas and Electric Company (PG&E). The proposed gas volumes will be imported from the province of Alberta, at the U.S./Canada border near Kingsgate, British Columbia through the pipeline facilities of PGT. On August 1, 1991, PGT obtained a certificate of public convenience and necessity from the Federal Energy Regulatory Commission (FERC) authorizing the construction of new pipeline facilities, otherwise known as the PGT/PG&E Expansion

Project.1/ Under this certificate, PGT will transport the

proposed gas volumes for Burbank, as well as transporting additional volumes for other shippers. The pipeline expansion is expected to be completed by November 1993. PG&E will transport the gas from Malin, Oregon to Kern River Station, California, which is the point of interconnection with Southern California Gas Company (SoCalGas). The gas will then be transported by SoCalGas to Burbank under existing transportation tariffs. The proposed imports will commence on the date capacity becomes available on the PGT/PG&E Expansion Project, which is expected to be on or about November 1, 1993.

Under the terms of the gas purchase contract with Unigas, Burbank is obligated to take delivery of 90% of the daily contract quantity multiplied by the number of days in the contract year. If Burbank fails to purchase this minimum annual quantity, it must pay Unigas a non-recoverable amount equal to 18% of the commodity price multiplied by the difference between the minimum annual quantity and the volumes Burbank has purchased during that year. Burbank has no obligation to purchase a minimum daily quantity. Additionally, the contract contains a warranty provision under which Unigas must deliver the daily contract quantity or reimburse Burbank for the cost of obtaining alternate supplies of gas or electricity to replace the delivery shortfall. Further, if Burbank purchases volumes in excess of

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1/ See 56 FERC 61,192. _ ___

the minimum annual contract quantity, it will pay Unigas an incentive price equal to 85% of the current contract year commodity price for those excess volumes.

The commodity price for gas purchased by Burbank will be calculated on an annual basis, using a base price index adjusted to reflect gas prices from the Alberta and southwest U.S. markets. Burbank also will pay Unigas monthly transportation charges based on charges billed to Unigas by NOVA Corporation of Alberta and Alberta Natural Gas Company Limited. Burbank is required to pay the transportation charge whether or not any gas is taken. If the need arises to change the method of determining the commodity price, the contract provides that the parties will determine a suitable substitute method to calculate that price. The contract also contains arbitration provisions to be used in the event the parties are unable to agree upon suitable substitute methods for calculating either the commodity or transportation price components.

II. INTERVENTIONS AND COMMENTS

DOE published a notice of receipt of Burbank's application in the Federal Register on June 19, 1992,2/ inviting protests, motions to intervene, notices of intervention and comments to be filed by July 20, 1992. On July 29, 1992, PGT filed a late motion to intervene in support of the application. No delay in this proceeding or prejudice to any party will result from this

2/ 57 F.R. 27454.

late filing. Therefore, the late filing is accepted, and this order grants intervention to PGT.

II. DECISION

The application filed by Burbank 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."3/ Regarding import authorizations, the section 3 determination is directed by DOE's natural gas import policy guidelines.4/ 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 long-term arrangements, need for the gas and the security of the imported gas supply. Further, the National Environmental Policy Act of 1969 (NEPA)5/ requires DOE to examine the environmental effects of natural gas import authorizations.

The DOE guidelines state that the competitiveness of an import arrangement will be assessed by a consideration of the whole fabric of the arrangement. The guidelines contemplate that the contract provisions should be sufficiently flexible to permit pricing and volume adjustments as required by market conditions and availability of competing alternative fuels, including

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3/ 15 U.S.C. 717b.

4/ 49 F.R. 6684 (February 22, 1984).

5/ 42 U.S.C. 4321 et seq.

domestic gas. Burbank's uncontested import proposal, as a whole, is competitive. In particular, the commodity pricing formula is tied to spot market prices for both Canadian and U.S. supplies, and that formula may be redetermined by the parties if the need would arise. Although Burbank has a definite commitment to take a minimum amount of gas, the negotiated deficiency payment benefits both parties by providing a guarantee that the volumes contracted for will be taken, while at the same time ensuring the continued availability and reliability of the supply during the license term. Additionally, Burbank is not obligated to purchase a minimum daily quantity, so that it has the flexibility to make up potentially deficient volumes over the entire contract year. In sum, DOE is satisfied that the import price will respond to changing market conditions, and together with the other contract provisions, reasonably assure the competitiveness of the gas over the term of the arrangement.

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. We have found on the basis of the record before us that Burbank's proposed import arrangement is competitive and, therefore, can be presumed to be needed. Burbank currently purchases natural gas to fuel its electrical generation facilities from various domestic sources, under interruptible transportation service agreements. If curtailment of these supplies occurs, Burbank must either purchase a greater portion of its electricity requirements from wholesale electric power

suppliers at higher cost, or run its generation facilities on oil. Therefore, Burbank's purchase of natural gas from Unigas will be a necessary source of natural gas for its electrical generation facilities requirements.

The security of the natural gas supply has not been disputed. DOE believes that the supply for the proposed imports is reliable based on the reserves associated with the contracts Unigas has signed with several Alberta producers, because those reserves are dedicated solely and irrevocably to Unigas. Additionally, the gas purchase contract between Burbank and Unigas contains a warranty provision under which Unigas must deliver the daily contract quantity or suffer the penalty of having to reimburse Burbank for the cost of obtaining alternate supplies of gas or electricity. Accordingly, DOE finds that this import will not lead to any undue dependence on an unreliable source of supply or otherwise compromise the energy security of the nation over the term of the proposed import.

NEPA requires Federal agencies to give appropriate consideration to the environmental effects of their proposed actions. On May 19, 1992, DOE issued a Record of Decision (ROD) which addressed the potential environmental impacts related to several other proceedings involving the PGT/PG&E Expansion Project.6/ The conclusions in the ROD indicate that the

pipeline facilities proposed by PGT and PG&E would be environmentally acceptable if they are constructed and operated

6/ 57 F.R. 21784 (May 22, 1992).

in accordance with the environmental conditions contained in the certificates issued by FERC and the California Public Utilities Commission, which authorized the construction of PGT's and PG&E's incremental facilities.7/ The environmental impacts discussed in the ROD have not changed and this Opinion and Order incorporates DOE's findings.

After taking into consideration all of the information in the record of this proceeding, I find that the authorization requested by Burbank to import from Canada up to 4,817 Mcf per day of natural gas through October 31, 1999, is not inconsistent with the public interest and should be granted.

ORDER

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

A. The Public Service Department, City of Burbank, California (Burbank) is authorized to import up to 4,817 Mcf per day of natural gas from Canada in accordance with the provisions of its October 15, 1990, gas purchase agreement with Unigas Corporation (Unigas), as described in the application and discussed in this Opinion and Order.

B. The authorization is effective beginning with the date of first delivery, expected to be November 1, 1993, and shall continue through October 31, 1999.

7/ See Pacific Gas Transmission Company, 56 FERC 61,192 (1991).

C. Burbank shall notify the Office of Fuels Programs (OFP), 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 imports of natural gas made under Ordering Paragraph A above within two weeks after deliveries begin.

D. Burbank shall file with the OFP, within 30 days following each calendar quarter, quarterly reports showing by month, the total volume of natural gas imports in Mcf and the average purchase price per MMBtu at the international border. If no imports or exports have been made, a report of "no activity" for that calendar quarter must be filed. The reports shall itemize separately the commodity and transportation charges on a per unit (MMBtu) basis and any deficiency payments made to Unigas during the particular calendar quarter. Failure to file quarterly reports may result in termination of this authorization.

E. The late motion to intervene filed by Pacific Gas Transmission Company is hereby granted, provided that its participation shall be limited to matters specifically set forth in its motion to intervene and not herein specifically denied, and that the admission of this intervenor shall not be construed as recognition that it might be aggrieved because of any order issued in this proceeding.

F. The first quarterly report required by Ordering Paragraph D is due not later than January 30, 1993, and should cover the period from the date of this order until the end of the calendar quarter, December 31, 1992.

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

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