Cited as "1 FE Para. 70,357"

Salmon Resources Ltd. (FE Docket No. 89-69-NG), September 29, 1990.

DOE/FE Opinion and Order No. 429

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

I. Background

On October 5, 1989, Salmon Resources Ltd. (Salmon) filed an application, which was supplemented on March 6, 1990, 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 authorization to import up to 15,700 MMBtu (approximately 15,700 Mcf) per day of Canadian natural gas for twenty years under the terms of a gas supply and purchase contract between Salmon and Shell Canada Limited (Shell). Up to 14,000 MMBtu per day would be supplied on a firm basis and up to 1,700 MMBtu per day would be supplied on an interruptible reasonable efforts basis. Salmon would resell the gas to Cogen Energy Technology Inc. (CETI) to fuel a cogeneration plant to be constructed by CETI at Castleton-on-Hudson in the State of New York.

The firm volumes requested in Salmon's application would be delivered by facilities that are part of the Niagara Import Point Project (NIP Project) to transport natural gas from Canada and domestic sources for use in the northeastern United States. The volumes would enter the U.S. near Niagara Falls, New York, and be transported to CETI via the pipeline facilities of Tennessee Gas Pipeline Company (Tennessee), CNG Transmission Corporation (CNG) and Niagara Mohawk Power Corporation (Niagara Mohawk). The volumes would be delivered from TransCanada PipeLines Limited's (TransCanada) pipeline facilities to Tennessee at the border near Niagara Falls, New York. The gas would then be transported through Tennessee's proposed Niagara spur facilities, consisting of 41.6 miles of pipeline looping, to an interconnection with CNG's facilities near Marilla, New York. CNG would then transport the gas from the Marilla, New York, area to Albany County, New York; CNG would construct 2.35 miles of 30-inch pipeline across the Hudson River in order to deliver the gas to CNG's interconnection with Niagara Mohawk's facilities near Brookview, New York. The gas would then be transported to the CETI cogeneration facility via a new 14,200-foot pipeline, eight inches in diameter, to be constructed by Niagara Mohawk. The 1,700 MMBtu per day of interruptible gas would be supplied using existing facilities.

The proposed 60 megawatt (net) gas-fired combined cycle cogeneration plant will be constructed on property leased from Fort Orange Paper Company (Fort Orange) by CETI at Castleton-on-Hudson, New York. The application indicated that the proposed cogeneration facility would be a qualifying facility under the Public Utility Regulatory Policies Act of 1978 and is expected to operate at 93 percent or higher of rated capacity. Thermal energy produced by the CETI plant will be sold to Fort Orange for process and heating steam. Electricity will be sold to Niagara Mohawk.

Salmon's natural gas import proposal is contained in a precedent agreement executed with Shell dated May 5, 1988, and related amending agreements dated February 27 and September 20, 1989 (the Shell-Salmon agreement), and in the Salmon-CETI gas sale and purchase agreement attached to the Shell-Salmon agreement. The Salmon-CETI gas sale and purchase contract was originally entered into on May 12, 1988, amended on February 27, 1989, and again on July 13, 1989. The July 13 contract governs the Salmon-CETI arrangement.

Under the precedent agreement, Salmon would purchase Canadian gas from Shell for delivery to CETI at a price equal to 98.5 percent of the commodity charge Salmon receives from CETI plus 100 percent of the demand charge received from CETI. Under the Salmon-CETI contract, CETI would pay Salmon a demand charge equal to the demand charges paid by Shell to NOVA Corporation of Alberta and TransCanada for transportation of the gas to the import point near Niagara Falls, New York. CETI would pay a commodity charge computed from a base price of $2.97 per MMBtu, adjusted to reflect changes in Niagara Mohawk's avoided energy and capacity costs expressed in terms of a weighted average floating tariff (WAFT). The WAFT is the price that would be paid for electricity per quarter based on Niagara Mohawk's avoided cost rates calculated on the basis of peak period rates and off-peak rates weighted in accordance with the hours such rates are in effect. The WAFT effective October 1, 1987, was 2.7540 cents per kilowatt hour (Kwh).

Under the avoided cost formula, when Niagara Mohawk's WAFT for the prior contract quarter did not exceed 6 cents per Kwh, the base price applies; when the WAFT for the prior quarter exceeds 6 cents per Kwh, but has not done so for more than a total of eight quarters, then the adjusted base price applies; and when the WAFT for the prior quarter has exceeded 6 cents per Kwh for more than a total of eight quarters, then the adjusted base price plus a surcharge applies. The adjusted base price is determined by multiplying the base price by a fraction consisting of the WAFT for the prior quarter in the numerator and the WAFT for the quarter before the prior quarter in the denominator. The surcharge would range from 7 cents per MMBtu to $1.50 per MMBtu based on the

number of quarters that have elapsed after commercial operations of the CETI plant have begun. Like the Shell-Salmon contract, the Salmon-CETI gas supply contract provides for a maximum daily quantity of 14,000 MMBtu of natural gas on a firm basis, plus up to an additional 1,700 MMBtu per day on an interruptible basis. There are no take or pay obligations provided for in the contracts.

A notice of the application was issued on May 18, 1990, inviting protests, motions to intervene, notices of intervention, and comments to be filed by June 28, 1990.1/ No comments were received.

II. Decision

Salmon's 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." 2/ This determination is guided by the DOE's natural gas import policy guidelines.3/ Under the guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test. Other considerations, particularly in long-term arrangements such as this, include, but are not limited to, need for the gas and security of the imported gas supply. In addition, DOE considers the environmental effects of natural gas import arrangements.

A. Competitiveness of the Import

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

Salmon's proposed import arrangement was negotiated to meet the requirements of CETI's cogeneration project. The base price and price adjustment provisions in the Salmon-CETI contract, to which Salmon's purchases from Shell are tied, reflect Niagara Mohawk's marginal avoided energy and generating capacity costs filed with and approved by the New York State Public Service Commission. The price of the imported gas therefore will reflect the competitive costs of fuel and the capacity for electric power generation in

the Castleton-on-Hudson area in the State of New York. Accordingly, on the basis of the record before it, DOE finds that the import is competitive.

B. Need

Under the policy guidelines, a finding of competitiveness gives rise to a presumption of need. We have found that Salmon's proposed import arrangement is competitive and, thus, can be presumed to be needed. The proposed volumes of natural gas to be imported by Salmon would be used to fuel a new cogeneration plant to be constructed by CETI at Castleton-on-Hudson in the State of New York. The plant will be constructed and operated pursuant to a 40-year lease agreement, which will ensure a long-term requirement for gas supplies. Therefore, the DOE finds that there is a need for the proposed import.

C. Security of Supply

Salmon notes in its application that Shell has committed to supply the gas required by CETI on a firm basis. Shell is currently the second largest producer of natural gas in Canada with average production of over 600 MMcf/d and proven reserves exceeding 4 Tcf. Shell's reserves in fields currently available for direct sales to customers total 900 Bcf, whereas total direct sale commitments, including 97 Bcf for CETI, are approximately 500 Bcf. Furthermore, no party has argued that Shell's reserves are not secure. Therefore, the 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.

D. 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).4/ The DOE participated as a cooperating agency during the preparation of, and has adopted, the NIP Project Final Environmental Impact Statement (FEIS) issued by the Federal Energy Regulatory Commission (FERC).5/ The FEIS examined the environmental effects of constructing and operating the NIP Project, including those facilities that would be used by Salmon to implement its proposed import arrangement. The DOE has concluded that the NIP 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.

The DOE has used the FEIS, as well as conducting an independent review, in assessing the environmental consequences of granting the proposed import. The DOE's findings are discussed in its consolidated Record of Decision (ROD) for the NIP Project facilities. The ROD was issued in conjunction with this and other NIP Project related orders and is being published in the Federal Register.6/ The DOE determined that the anticipated overall 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 the import arrangement in providing additional electrical supplies utilizing natural gas, which is less polluting than alternative fuels.

E. Conclusion

After taking into consideration all of the information in the record of this proceeding, I find that granting Salmon authority to import up to 15,700 MMBtu per day of natural gas from Canada beginning on the date of first delivery and ending August 31, 2011, is not inconsistent with the public interest and should be approved.

ORDER

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

A. Salmon Resources Ltd. (Salmon) is authorized to import up to 15,700 MMBtu of natural gas per day from Shell Canada Limited (Shell), beginning on the date of first delivery and ending on August 31, 2011, in accordance with the pricing and other provisions in Salmon's gas purchase agreement with Shell, as described in Salmon's application and this Opinion and Order.

B. Within two weeks after deliveries begin, Salmon 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 first delivery of natural gas authorized in Ordering Paragraph A above occurs.

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

Issued in Washington, D.C., on September 29, 1990.

--Footnotes--

1/ 55 FR 21774, May 29, 1990.

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

3/ 49 FR 6684, February 22, 1984.

4/ 42 U.S.C. 4321, et seq.

5/ FERC EIS-0057, June 15, 1990 (DOE EIS-0153).

6/ 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).