Cited as "1 FE Para. 70,280"

Project Orange Associates, L.P. (ERA Docket No. 88-01-NG), January 16, 1990.

DOE/FE Opinion and Order No. 274-A

Order Granting Authorization to Import Natural Gas from Canada Using Existing Facilities

I. Background

On May 18, 1989, Project Orange Associates, L.P. (Project Orange), filed a request with the Office of Fossil Energy (FE) of the Department of Energy (DOE) to amend a conditional authorization granted by the Economic Regulatory Administration (ERA) 1/ on October 17, 1988, in DOE/ERA Opinion and Order No. 274 (Order 274).2/ Order 274 grants Project Orange conditional authority to import up to 120,000,000 MMBtu (approximately 120 Bcf) of Canadian natural gas from Noranda, Inc. (Noranda), over a 20-year period, for use in a cogeneration facility to be constructed in Syracuse, New York. The final approval of this import was conditioned on completion of the environmental review of impacts associated with construction and operation of certain pipeline facilities proposed by Tennessee Gas Pipeline Company (Tennessee) to provide firm transportation service for the gas from the international border near Niagara Falls, New York.

Project Orange now proposes to import Canadian natural gas on an interruptible basis using existing facilities until the new facilities are built and is seeking to have its conditional authorization amended accordingly. Under Project Orange's original January 5, 1988, import application, the commercial operation date of the cogeneration plant and the date on which initial deliveries would take place were projected to be June 30, 1990. The commercial operation date is now scheduled for April 1, 1991. Project Orange indicates in its present filing before DOE that there is a possibility that Tennessee's pipeline expansion may not be accomplished before the cogeneration plant comes on line, due to the uncertainties surrounding completion of the environmental review and the actual timing of construction. Therefore, it has arranged interruptible transportation on existing Tennessee pipeline facilities for the gas purchased from Noranda. Project Orange requests that Order 274 be amended to authorize the importation of natural gas from Noranda utilizing Tennessee's existing mainline capacity until the interruptible service can be converted to firm service when the expansion of Tennessee's pipeline facilities takes place.

Under the interruptible transportation agreement, Tennessee will deliver 24,000 Dth (approximately 34,000 Mcf) per day to Project Orange. The only pipeline construction necessary for the interruptible transportation would be the installation of tie-in facilities at the point where Tennessee's No. 200 mainline and the 7-mile, 12-inch delivery pipeline extending from the cogeneration plant intersect.

The gas to be transported by Tennessee on an interruptible basis will be purchased by Project Orange from Noranda pursuant to the December 8, 1987, gas purchase agreement. As noted in the original December 30, 1987, import application and Order 274, the agreement does not contain take-or-pay or minimum take provisions that would penalize Project Orange for failure to take delivery of gas during periods of interruption. Instead, the agreement establishes maximum contract, annual, and daily quantities, and provides that Project Orange will forfeit the difference between the maximum contract entitlement and the quantity actually taken at the end of the term of the agreement. During periods of interruption on the Tennessee system, Project Orange indicates it intends to utilize its right under the gas agreement to have Noranda remarket the gas and remit to it the net proceeds from the sale.

At the time Order 274 was issued, the lump sum payment was set at $72.9 million. Project Orange filed with its application to amend Order 274 a January 11, 1989, amendment to the gas purchase contract with Noranda which revised the lump sum payment amount to $77.6 million. This payment equates to about $0.65 per Mcf if the total contract volume is taken over the 20-year term. In addition to the lump sum payment, a fee will be paid to Noranda to cover gathering and processing costs. The fee initially would be set at $0.30 per MMBtu and would be adjusted annually thereafter for inflation.

A notice of this request for amendment was issued on August 9, 1989, inviting protests, motions to intervene, notices of intervention, and comments to be filed by September 8, 1989.3/ No interventions or comments were received.

II. Decision

Project Orange asserts that the only change represented by this amendment request is the proposed use of existing facilities. In issuing Order 274 the DOE preliminarily determined that the import arrangement is competitive and consistent with DOE natural gas import policy guidelines,4/ that there is a demonstrated need for the gas, and that proven reserves owned or controlled by Noranda would provide a secure supply over the term of the requested authorization. Although the commodity pricing provisions of the gas sales agreement depart from customary provisions permitting fluctuations in response to market changes, the DOE noted that the agreement results from arms-length negotiations and reflects a balancing of the parties' respective commercial interests. A single up-front payment for gas was negotiated to secure a long-term supply commitment. The agreement also gives the importer the flexibility to request that Noranda market, either in Canada or in the United States, up to 4.5 million MMBtu each year (or 50 percent of the annual contract quantity) and refund the net proceeds to the importer. In addition, the sales agreement contains an arbitration procedure which either party can initiate.

The proposed use of existing facilities does not support or compel any change to the preliminary findings made in Order 274. Project Orange's uncontested amendment request is consistent with DOE policy guidelines. Based on the above information, I find that it is not inconsistent with the public interest to amend Order 274 to grant Project Orange authority to import, using existing facilities, up to 120,000,000 MMBtu's (approximately 120 Bcf) of Canadian natural gas beginning about April 1, 1991, for a 20-year term or until the condition imposed by Order 274 related to the use of Tennessee's proposed new facilities to accommodate firm deliveries is met, whichever occurs first.

ORDER

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

A. DOE/ERA Opinion and Order No. 274 (Order 274) issued October 17, 1988, to Project Orange Associates, L.P. (Project Orange), is amended to authorize Project Orange to import, utilizing the existing facilities of Tennessee Gas Pipeline Company (Tennessee), up to 120,000,000 MMBtu's (approximately 120 Bcf) of Canadian natural gas in accordance with the December 8, 1987, gas purchase contract between Project Orange and Noranda, Inc. The authorization commences about April 1, 1991, for a term of 20 years, or until the condition imposed by Ordering Paragraph B of Order 274 is satisfied, whichever occurs first.

B. Project Orange 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 delivery of the imported natural gas authorized in Ordering Paragraph A above within two weeks after deliveries begin.

C. With respect to the imports authorized by this Opinion and Order, Project Orange shall file with the Office of Fuels Programs 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. The monthly price information shall provide a breakdown of all gas costs including the applicable gathering, production, and processing charges, Canadian and domestic transportation charges, and Project Orange's share of the applicable Canadian and U.S. export/import taxes and fees. When applicable, Project Orange shall report, by month, the quantities of its imported natural gas that it requested Noranda to market elsewhere and the U.S. dollar amount received from Noranda for such sales.

D. Order 274 remains conditional with respect to imports involving the proposed expansion of pipeline facilities by Tennessee.

Issued in Washington, D.C., January 16, 1990.

--Footnotes--

1/ On January 6, 1989, the authority to regulate natural gas imports and exports was transferred from the ERA to FE. DOE Delegation Order No. 0204-127 specifies the transferred functions (54 FR 11436, March 20, 1989).

2/ 1 FE Para. 70,815. Order 302 was originally issued to G.A.S. Orange Development, Inc. Subsequently, on December 19, 1988, the ERA approved the transfer of this conditional authority to Project Orange (unnumbered and unpublished order).

3/ 54 FR 32690, August 9, 1989.

4/ 49 FR 6684, February 22, 1984.