

Cited as "1 FE Para. 70,370"

Brooklyn Union Gas Company, et al. (ERA Docket Nos. 86-44-NG, 86-45-NG, 86-46-NG, 86-48-NG, 87-02-NG), November 15, 1990.

DOE/FE Opinion and Order No. 368-A

Order Granting Authorization to Import Natural Gas from Canada

I. Summary

On January 11, 1990, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued DOE/FE Opinion and Order No. 368 (Order 368) conditionally authorizing 18 Northeastern local distribution companies (LDC's) to import up to 397,100 Mcf per day of Canadian natural gas.^{1/} The DOE made a preliminary determination that the gas imports would not be inconsistent with the public interest. In particular, the DOE preliminarily found that the import arrangements would provide long-term reliable supplies of needed natural gas on market-responsive terms. In addition, DOE found that the imports would enhance the energy mix and diversify the sources of energy supplies available in the Northeast, thereby stimulating competition and promoting energy security.

The authorizations were conditioned upon completion by DOE of a review of the environmental impacts of the construction and operation of the facilities proposed to import and transport the natural gas. The DOE has now completed its environmental review of the proposed facilities that will be used to transport the majority of the natural gas and has reexamined the import arrangements in conjunction with that review. The DOE has determined that these arrangements will provide additional, long-term, secure supplies of competitively priced gas needed in the Northeast, and are, therefore, not inconsistent with the public interest.

II. Background

The authorization requests consist of five joint applications filed by a total of 18 LDC's (the Repurchasers), to import up to a combined total of 397,100 Mcf per day of natural gas from Canada. The joint applications, filed in Economic Regulatory Administration (ERA) Docket Nos. 86-44-NG, 86-45-NG, 86-46-NG and 86-48-NG, and 87-02-NG, were consolidated and collectively referred to as Brooklyn Union Gas Company et al. (Brooklyn Union), after the lead applicant in each docket.^{2/}

Each of the applications called for the natural gas to be exported from Canada and sold to the Repurchasers by Alberta Northeast Gas, Ltd. (ANE), a Canadian corporation established by the Repurchasers. The natural gas would be purchased by ANE from various Canadian suppliers.

The applications stated that the majority of the proposed imports would be imported at the yet to be established import point of the Iroquois Gas Transmission System (IGTS) on the international border near Iroquois, Ontario. One of the applicants, National Fuel Gas Supply Corporation (National Fuel), proposed to import its 10,000 Mcf per day portion of the Brooklyn Union volumes at Tennessee Gas Transmissions System's (Tennessee) existing Niagara import point.

The initial four joint applications were filed on August 1, 1986. The fifth application and the first amendments to the applications were filed January 14, 1987. Subsequent amendments were filed on May 22, 1987, and on February 21, 1989. Federal Register notices granting an opportunity to intervene in, and/or comment on, the Brooklyn Union applications were issued in response to each application and amendment.^{3/} Numerous interventions and comments were received. The principal opposition came from associations representing petroleum marketers, domestic natural gas producers, and environmental groups concerned about the impacts of the proposed IGTS. Support came from participants in the import arrangements and from several northeastern States. In addition to receiving comments and answers in response to the various Federal Register notices, DOE issued two procedural orders, on September 17, 1987, and May 6, 1988, in connection with the Brooklyn Union dockets, providing interested parties an opportunity for further comments on the applications and soliciting certain additional information from the applicants.

Subsequent to the issuing of Order 368, DOE received requests from two of the intervenors, the Independent Petroleum Association of America (IPAA) and the New England Fuel Institute and Empire State Petroleum Association, for rehearing. The DOE determined that the rehearing requests were premature since Order 368 made only preliminary findings on the Brooklyn Union applications. Further material added to the record of the Brooklyn Union proceeding after Order 368 was issued include: a letter to the Secretary of Energy, Admiral James D. Watkins, from Senators Johnston, Domenici, Bingaman and Boren, of the U.S. Senate Committee on Energy and Natural Resources, regarding the proceeding; Admiral Watkin's reply letters; and responses to questions from Senators Johnston, Domenici and Bingaman concerning Order 368 and DOE's natural gas import policy. On November 6, 1990, IPAA submitted supplemental comments on DOE's responses to the Senators questions, introduced various

documents that were prepared for a related proceeding on IGTS at the Federal Energy Regulatory Commission (FERC), and repeated its request for a trial-type hearing.

III. Decision

The Brooklyn Union applications have been evaluated to determine if the proposed import arrangements meet the public interest requirements of section 3 of the Natural Gas Act (NGA). Under section 3, an import must be authorized unless there has been a finding that the import "will not be consistent with the public interest".^{4/} In making its section 3 determination the DOE is guided by its natural gas import policy guidelines,^{5/} 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, DOE considers the environmental effects of natural gas import arrangements.

A. Environmental Considerations

Environmental concerns are an important element in DOE's public interest determination. In general, the DOE considers environmental issues in the context of the National Environmental Policy Act of 1969 (NEPA).^{6/} The FERC is the Federal agency primarily responsible for conducting an examination of the environmental effects of constructing import facilities and related domestic pipeline facilities in connection with the Brooklyn Union import proposals. The DOE participated as a cooperating agency during the preparation of, and has adopted, the Iroquois/Tennessee Phase I Pipeline Project (Iroquois Phase I) Final Environmental Impact Statement (FEIS) issued by the FERC on June 1, 1990.^{7/}

Generally, the Iroquois/Tennessee Pipeline Project involves proposals to construct and operate pipeline facilities, including a major new pipeline system, IGTS, extending from the U.S./Canadian border through the states of New York and Connecticut and terminating on Long Island, New York. Eventually, the Iroquois/ Tennessee Project is designed to transport up to 575,900 Mcf per day of Canadian natural gas (as well as 70,000 Mcf per day of domestic gas) to various U.S. customers. The gas would be delivered to end use customers by IGTS or by Tennessee Gas Pipeline Company (Tennessee) or Algonquin Gas Transmission Company (Algonquin). The FERC determined that the full project to deliver up to 575,900 Mcf per day is not complete because Algonquin's application for expanded facilities was not sufficiently detailed. Therefore, the FEIS only analyzed the delivery of 422,900 Mcf per day of natural gas that

would be delivered to customers directly by IGTS or by Tennessee; the Iroquois Phase I Project. The remaining 153,000 Mcf per day of Canadian gas (and the 70,000 Mcf per day of domestic gas) would be part of Iroquois Phase II, which includes facilities and services by IGTS, Tennessee, and Algonquin. Determinations made in this order are applicable to those Brooklyn Union volumes that will use Iroquois Phase I facilities only.^{8/}

Of Brooklyn Union's proposed imports, 352,100 Mcf per day would use Iroquois Phase I facilities and 35,000 Mcf per day would use Iroquois Phase II facilities.^{9/} Final authorization for the 10,000 Mcf per day that National Fuel proposes to import at Tennessee's Niagara import point was issued on September 29, 1990, in DOE/FE Opinion and Order No. 425.10/

On June 6, 1990, IPAA filed a request for an supplemental study on the environmental effects of the Iroquois Phase I facilities. The IPAA asserted that the FEIS did not consider the "no action" alternative or alternatives involving the expansion of domestic pipeline, as required by NEPA. On June 21, 1990, Brooklyn Union filed a response to IPAA's request, claiming that the "no action" and domestic pipeline expansion alternatives were adequately addressed in the FEIS. We agree; both the "no action" alternative and the feasibility of expanding existing domestic facilities were examined in the FEIS. The quote from the FEIS used by IPAA in support of its assertion concerns the issue of need for the service, not alternatives. The need for the imported gas is an issue properly addressed by the DOE in rendering its decision on the import applications based on the complete record in the proceeding. The FEIS is sufficient so long as it identifies the environmental issues that should be weighed in analyzing the proposed import arrangements. Therefore, DOE has concluded that the Iroquois Phase I FEIS is a complete document that complies with the NEPA process and provides an adequate basis to evaluate the environmental aspects of the NGA, section 3, public interest determination concerning the import arrangements.

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 Iroquois Phase I facilities. The ROD was issued in conjunction with this and other Iroquois Phase I related orders and is being published in the Federal Register.^{11/} 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 meeting current and future energy needs in the Northeast.

B. IPAA Filings

IPAA, in its November 6, 1990, filing, claimed that DOE's responses to questions from Senators Johnston, Domenici and Bingaman were erroneous and cannot form a basis for approving the Brooklyn Union import arrangements. In general, the questions and responses dealt with DOE's overall import policy and its application to Brooklyn Union. Those responses that are Brooklyn Union-related are no more than explanations of the preliminary determinations made in Order 368. The arguments advanced by IPAA in support of their contention that the responses were erroneous generally raise policy issues already addressed in Order 368 and numerous other proceeding to which IPAA has been a party.^{12/}

The documents submitted in conjunction with IPAA's November 6 filing deal with the differences in U.S./Canadian pipeline ratemaking, the IGTS project's adverse impacts on domestic gas producers, and the need for additional gas supplies in the Northeast. The IPAA claims that these documents demonstrate there is no incremental need for the proposed imported natural gas, that domestic gas will be displaced, and that the arrangements are anticompetitive.^{13/} However, we find that the documents make much the same arguments as materials already in the Brooklyn Union dockets which were considered by DOE in making its preliminary determinations in Order 368.

In conclusion, DOE has examined IPAA's submission and has concluded that it contains no information that would provide a basis for altering the Department's position in Order 368.

C. General Policy Consideration

The DOE natural gas import policy guidelines state that the terms and conditions of an import arrangement, taken together, must provide a supply of gas that the importer can market competitively over the term of the contract. They contemplate that the contract arrangements should be sufficiently flexible to permit pricing and volume adjustments as required by market conditions and availability of competing fuels, including domestic natural gas.

Order 368 preliminarily found that, under the Brooklyn Union import proposals, the Canadian gas would be imported and sold directly to the Repurchasers under gas purchase agreements containing several provisions that provide flexibility with respect to both volume and price, thus assuring that the gas supply can be marketed competitively over the term of the purchase contracts. Specifically, the gas purchase agreements contain no take-or-pay requirements, provide for price adjustments based on the price of alternative

fuels in the markets to be served by the imported gas, and provide for yearly renegotiation and arbitration of the quantity and pricing provisions. The gas purchase agreements also contain provisions that allow ANE to offer volumes not taken by one Repurchaser to another Repurchaser, thus furthering the flexibility of the proposed arrangements. Order 368 preliminarily concluded, therefore, that the terms and conditions of the import arrangements, taken together, provide competitively priced supplies of gas over the terms of the contracts.

Under DOE import guidelines, need for proposed imports is viewed as a function of marketability and gas is presumed to be needed if it is found to be competitive. Order 368 preliminarily found that the proposed import arrangements are competitive. The gas purchase agreements were freely negotiated between the buyers and the sellers and contain market-responsive, flexible pricing terms, renegotiation and arbitration clauses, and do not have any minimum take provisions. Accordingly, the proposed imports are presumed to be needed.

Finally, the preliminary finding of Order 368 was that natural gas has been imported from Canada for many years and there has been no instances of a major natural gas supply interruption that would call into question Canada's future reliability as a supplier of natural gas to this country. In addition, the DOE noted that the Northeast has traditionally been at the end of the domestic pipeline distribution system and that the proposed import arrangements would enhance energy security in the region by adding to the diversity of energy sources.

IV. Conclusion

After examining the entire record of this proceeding, including the Iroquois Phase I FEIS, I find that there is no information that would provide a basis for altering DOE's position in Order 368 that the proposed import arrangements are not inconsistent with the public interest within the meaning of section 3 of the NGA. Accordingly, this opinion and order grants the Brooklyn applicants final authorization to import the Iroquois Phase I volumes.

ORDER

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

A. The applicants in the consolidated Brooklyn Union Gas Company et al. dockets (ERA Docket Nos. 86-44-NG, 86-45-NG, 86-46-NG, 86-48-NG, and 87-02-NG)

are authorized to import up to 352,100 Mcf per day of Canadian natural gas using the Iroquois/Tennessee Phase I Project facilities as discussed in this opinion and order.

B. The natural gas imports authorized in Ordering Paragraph A above are to be imported in accordance with the pricing and other provisions of the gas sales agreements contained in the consolidated applications and discussed in DOE/FE Opinion and Order No. 368.

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

--Footnotes--

1/ 1 FE Para. 70,285.

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

3/ See Order 368, supra note 1.

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

5/ 49 FR 6684, February 22, 1984.

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

7/ FERC EIS-O054 (DOE EIS-0152).

8/ The Iroquois Phase II facilities are being considered by the FERC in a separate environmental document. Therefore, the preliminary determinations made in Order 368 for those Brooklyn Union volumes that propose to utilize the Phase II facilities will remain conditional pending the completion of the Phase II environmental review and DOE's responsibilities under NEPA.

9/ The following is a list of the Brooklyn Union imports that will use the Iroquois/Tennessee Phase I and Phase II Project Facilities:

Importer	Phase I (Mcf/d)	Phase II (Mcf/d)	Total
Brooklyn Union Gas Company...		70,0000	0 70,000

Connecticut Light and Power Company ...	56,000	3,000	59,000
Connecticut Natural Gas Corporation ...	35,000	15,000	50,000
New Jersey Natural Gas Company...	40,0000	0	40,000
Southern Connecticut Gas Company...	35,0000	0	35,000
Long Island Lighting Company ...	35,0000	0	35,000
Central Hudson Gas and Electric Corporation ...	20,0000	0	20,000
Consolidated Edison of New York, Inc....	20,0000	0	20,000
Boston Gas Company ...	17,1000	0	17,100
New York State Electric and Gas Corporation ...	0	17,000	17,000
Public Service Electric and Gas Company ...	10,0000	0	10,000
Elizabethtown Gas Company ...	5,0000	0	5,000
Gas Service, Inc. ...	2,0000	0	2,000
Manchester Gas Company ...	2,0000	0	2,000
Essex County Gas Company ...	2,0000	0	2,000
Colonial Gas Company ...	2,0000	0	2,000
Valley Gas Company ...	1,0000	0	1,000
Totals ...	----- 352,100	----- 35,000	----- 387,100

10/ 1 FE Para. 70,353.

11/ 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).

12/ See, e.g., Minnegasco, Inc., 1 ERA Para. 70,721 (September 21, 1987); Texas Eastern Transmission Corporation, 1 ERA Para. 70,733 (October 30, 1987).

13/ We note that in the FERC proceeding for which the documents were originally prepared, a FERC administrative law judge determined that there was an incremental need for additional gas supplies in the Northeast and that domestic gas would not be displaced. 52 FERC 61,031 (September 11, 1990).