UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

LOCKPORT ENERGY ASSOCIATES, L.P.	FE DOCKET NO. 91-42-NG

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

DOE/FE OPINION AND ORDER NO. 662

AUGUST 31, 1992

I. BACKGROUND

On June 15, 1991, as amended August 19, 1992, Lockport Energy Associates, L.P. (Lockport) 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 for authorization to import up to 12,000 Mcf of natural gas per day from Canada for 15 years beginning on the date of the initial delivery. Lockport is a Delaware limited partnership with its principal place of business in Lockport, New York. Lockport's general partner is CU Energy Lockport GP, Inc., a Delaware corporation and a wholly owned subsidiary of Commercial Union Energy Corporation. The gas proposed for import would be purchased from ProGas Limited (ProGas) and used to fuel Lockport's new 168.8 megawatt, combined-cycle, cogeneration powerplant in Lockport, New York. Transportation from the import point at the international border near Niagara Falls, New York, to the cogeneration plant site would be provided by Tennessee Gas Pipeline Company.

The cogeneration plant began commercial operation July 8, 1992. /1 The proposed imports represent 30 percent of the plants total gas requirements. The balance of the requirements are met from domestic sources. Electricity produced by the cogeneration facility is sold to the New York State Electric and Gas Corporation (NYSEG) and electricity and steam is sold to the Harrison Radiator Division of General Motors Corporation.

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1 See letters dated July 14 and July 24, 1992, filed with

FE by Mr. William Wilson, counsel for Lockport.

Lockport has executed a contract with ProGas dated February 22, 1991, to purchase a daily volume of up to 12,000 Mcf of gas. Under the contract, Lockport must take a minimum annual quantity of gas equal to 80 percent of the sum of the daily contract quantities, with any volume deficiencies to be made up in the contract years following the year in which that deficiency occurred. If Lockport is unable to purchase the minimum annual contract quantity in any year, then it must purchase gas from ProGas ratably with its average purchases from other suppliers of gas.

The contract price of the gas consists of a monthly demand charge and a commodity charge. The demand charge would be the sum of the demand tolls paid by ProGas for transportation on the intraprovincial pipelines of Nova Corporation of Alberta (NOVA) and TransGas, Inc. (TransGas), and on the system of TransCanada PipeLines Limited (TransCanada) from Empress, Alberta to Niagara Falls, together with the demand toll charged by ProGas for its services, plus a gas reservation charge equal to .011 times the adjusted base price. The adjusted base price, equal to $1.68 (U.S.) per MMBtu on November 1, 1991, would be subject to a seven percent annual increase. The commodity charge is equal to the sum of the adjusted base price and the commodity costs of transporting an MMBtu of gas on Nova and TransGas, plus charges for fuel gas consumed in transporting the volumes.

Either Lockport or ProGas may seek renegotiation of the commodity charge for the imported gas by giving written notice to

the other not less than 120 days nor more than 150 days prior to November 1 of any contract year. Prior to November 1, 1998, any price revision under the contract requires the agreement of both parties. After November 1, 1998, if no mutually agreeable revision of the commodity charge can be reached within 60 days after the request for renegotiation, either Lockport or ProGas may require the matter to be submitted to arbitration solely to determine that the current price payable under the contract is either more or less than the prevailing prices for comparable long-term gas service with similar load factors. If a modification of the commodity charge is determined to be justified, then an adjustment shall be made to accurately reflect gas prices in the markets served for comparable gas supply service to the extent that the adjustment does not: (1) impair Lockport's ability to fully cover the operating cost of the cogeneration facility; (2) impair Lockport's ability to service fully the debt relating to the cogeneration facility; and (3) produce a material effect on Lockport's net cash flow from the cogeneration.

If ProGas fails to deliver at least 90 percent of the daily contract quantity over any contract year, then Lockport has the right to require renegotiation of the daily contract quantity. If renegotiation does not result in a mutually agreeable daily contract quantity within 60 days of Lockport's request for renegotiation, then either Lockport or ProGas may require that the matter be submitted to arbitration to determine whether

modification of the daily contract quantity is necessary to make such quantities consistent with Lockport's requirements and ProGas's ability to deliver the gas to Lockport.

In support of its application, Lockport states that the gas purchase contract with ProGas was negotiated at arms length and, together with its purchase agreements with domestic suppliers, will permit electricity produced by the cogeneration plant to be sold to NYSEG at fixed rates of escalation. In addition, Lockport asserts the volume and price adjustment provisions in the contract provide flexibility to respond to market forces.

With respect to the security of the gas supply, Lockport states that the total proven reserves in the Province of Alberta available to meet ProGas' obligations to all of its customers is estimated to be 60.8 Tcf and that the total gas requirements for the Lockport/ProGas contract is .066 Tcf. According to Lockport, the volumes to be supplied by ProGas were previously committed to and released by Texas Eastern Transmission Company. Therefore, there will be no incremental impact on ProGas' gas supply commitments. Further, Lockport asserts additional security for the gas supplies is provided by an agreement with ProGas dated February 28, 1991, which requires ProGas to provide biannual reports on its gas reserves to Lockport and to prorate its gas sales to all of its customers if the reserves fall below certain prescribed levels.

II. INTERVENTIONS AND COMMENTS

A notice of receipt of application was published in the Federal Register inviting protests, motions to intervene, notices of intervention, and comments to be filed by October 15, 1991. /2 No motions to intervene or comments were received.

III. DECISION

The application filed by Lockport 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 This determination is guided by DOE's natural gas import policy guidelines, under which the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test. /4 DOE also considers, particularly in a long-term arrangement, need for and the security of the imported gas supply.

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 provisions should be sufficiently flexible to permit pricing and volume adjustments as required by market conditions

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2 56 FR 46606, September 13, 1991.

3 15 U.S.C. 717b.

4 49 FR 6684, February 22, 1984.

and the availability of competing alternate fuels, including domestic gas.

Lockport's uncontested import proposal, as a whole, is competitive. The commodity charge for the imported gas may be renegotiated periodically under the terms of the contract and submitted to arbitration, if necessary, to assure that the price accurately reflects gas prices in the market served for comparable service. Although Lockport is subject to a minimum purchase requirement of 80 percent of the daily contract quantities, Lockport may make up any deficiency in the contract years following the year in which it failed to purchase the minimum annual quantity. If ProGas fails to deliver at least 90 percent of the daily volumes nominated by Lockport over any contract year, Lockport has the right to require renegotiation of the daily contract quantity. Accordingly, DOE concludes that the proposed import arrangement will ensure a competitive gas price and the ability of the contracting parties to respond to changing market conditions.

Need for the gas is viewed under the DOE guidelines as a function of marketability and the gas is presumed to be needed if it is competitive. Further, the import volumes would augment the other firm domestic gas purchases Lockport is currently making to operate its cogeneration facility.

Finally, security of the Canadian gas supply has not been disputed. ProGas has substantial proven gas reserves to meet its obligations to its customers and must provide biannual

reports to Lockport on its gas reserves. Accordingly, DOE finds that security of supply has been established.

After taking into consideration all of the information in the record of this proceeding, I find that granting Lockport authority to import up to 12,000 Mcf of natural gas per day from Canada for a period of 15 years under the gas purchase agreement with ProGas is not inconsistent with the public interest. /5

ORDER

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

A. Lockport Energy Associates, L.P. (Lockport) is authorized to import at Niagara Falls, New York, up to 12,000 Mcf of natural gas per day over a period of 15 years beginning on the date of the first delivery in accordance with the pricing and other provisions of its gas purchase contract with ProGas Limited dated February 22, 1991, as described in the application and discussed in this Opinion and Order.

B. Lockport shall notify the Office of Fuels Programs (OFP), Fossil Energy, FE-50, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in writing of the date of initial deliveries of natural gas imported under

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5 Because the proposed import of gas will use existing pipeline facilities, DOE has determined that granting this authorization is not a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321 et

seq.); therefore, an environmental impact statement or an environmental assessment is not required. See 40 C.F.R. 1508.4 and 54 F.R. 15122 (April 24, 1992).

Ordering Paragraph A above within two weeks after deliveries begin.

C. With respect to the imports authorized by this Opinion and Order, Lockport shall file with 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. The monthly price information shall itemize separately the demand and commodity charges on a monthly and per unit (MMBtu) basis. If no imports have been made, a report of "no activity" for that calendar quarter must be filed. Failure to file quarterly reports may result in termination of this authorization.

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

Issued in Washington, D.C., August 31, 1992.

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