

Cited as "1 ERA Para. 70,122"

Distrigas Corporation (ERA Docket No. 82-13-LNG), July 12, 1984.

Order Granting Interventions and Providing Opportunity for Comment and Requests for Additional Procedures

### I. Background

On August 27, 1982, Distrigas Corporation (Distrigas) filed an application with the Economic Regulatory Administration (ERA) requesting that its existing authorization to import liquefied natural gas (LNG) from Algeria be amended to reflect certain changes in service resulting from an amendment to its LNG purchase agreement with its supplier, Sonatrach, the Algerian national energy company.

Currently, Distrigas is authorized to import 1,900,000 cubic meters (43.5 million MMBtu) of LNG per year for sale to its affiliate, Distrigas of Massachusetts Corporation (DOMAC), under an order issued on December 31, 1977, in ERA Docket No. 77-011-LNG.1/ DOMAC receives and stores the LNG at Everett, Massachusetts, and resells it to eleven nonaffiliated distribution company customers in New England, New York, and New Jersey which use the LNG primarily for peak shaving and high priority service.<sup>2/</sup>

The amendment, dated July 31, 1982, would revise the sales agreement to (1) increase the F.O.B. price to \$4.44/MMBtu; (2) adjust quarterly the F.O.B. price based on an average of six different crude oils; (3) reduce the take-or-pay obligation of Distrigas to 14 instead of 17 cargoes per year; (4) modify the delivery schedule to provide for nine cargoes in the winter and five in the summer; (5) provide Distrigas an option to receive an additional three cargoes in any one contract year;<sup>3/</sup> (6) change the method of calculating the Btu content of the LNG with a resulting price reduction of about 5 cents/MMBtu; (7) establish provisions to minimize demurrage; (8) postpone the next contract review until January 1986; and (9) assess a surcharge designed to give effect to the new F.O.B. price from and after the date of filing of the application for amendment, August 27, 1982.

On September 24, 1982, the ERA issued a notice of Distrigas' application inviting protests or petitions to intervene, which were to be filed by November 1, 1982.<sup>4/</sup> The ERA received four petitions and motions to intervene; three were filed on time, and one was filed six and a half months late. Appendix A lists those parties filing interventions.

In addition to its petition to intervene, Boston Gas Company (Boston Gas) filed a protest and request for a trial-type hearing, alleging that the revised provisions in Distrigas' purchase contract would expose Boston Gas and its customers to unreasonable new risks of price escalations and increased purchase obligations.

A joint petition filed on behalf of DOMAC's ten other distribution company customers<sup>5/</sup> on October 28, 1982, answered Boston Gas' protest, and moved for summary disposition of the surcharge provision in the amended contract. Distrigas responded to Boston Gas' protest disputing Boston Gas' assertions and opposing its request for a hearing. Boston Gas requested that Distrigas' answer to its protest be rejected as improper. On November 16, 1983, Boston Gas filed a motion asking that the ERA expedite its review of Distrigas' application.

On December 1, 1983, Boston Gas withdrew its protest and request for a trial-type hearing, indicating that a settlement agreement had been concluded among Distrigas, DOMAC, and DOMAC's distribution company customers.<sup>6/</sup> Under the agreement, Boston Gas would receive a reduction in its annual contract quantity with DOMAC. Boston Gas stated it supports approval of Distrigas' amendment to the import contract, subject to Federal Energy Regulatory Commission (FERC) approval of the settlement agreement, but it continued to oppose the surcharge provision that would allow a retroactive rate increase.

On May 19, 1983, the Massachusetts Energy Facilities Siting Council (Council) filed a late motion to intervene stating that events had transpired since the intervention deadline which warranted its participation on behalf of consumers in the Commonwealth of Massachusetts. The motion also requested a trial-type hearing. Distrigas answered and objected to the Council's intervention as unfounded and asserted that the Council's hearing request should be denied.

With regard to the Council's late filing, no delay to the proceeding or prejudice to any party will result from granting this intervention. Furthermore, despite Distrigas' objection, we believe the Council has demonstrated concerns and interests not adequately represented by other parties to this proceeding and, therefore, its petition should be admitted. Accordingly, the late filing is accepted, and this order grants intervention to all four petitioners.

On February 15, 1984, the Secretary of Energy issued new policy guidelines for the importation of natural gas, along with revised delegation

orders to the Administrator of the ERA.<sup>7/</sup> The objective of the new policy is to establish international gas trade on a competitive and market responsive basis. As a first step in implementing the new policy, a procedural order was issued on February 16, 1984, setting forth certain reporting and other requirements for all importers, including Distrigas.<sup>8/</sup>

On April 16, 1984, Distrigas filed a motion for a 60-day extension of the time to supplement its application in accordance with that order, based on its need to accomplish certain contract modifications with its customers and to assess more accurately compliance of its import arrangement with the policy guidelines. An extension was granted to June 15, 1984.<sup>9/</sup>

In its June 15, 1984 supplement, Distrigas asserted that the terms of its import arrangement, when taken together, are consistent with the policy guidelines because they permit both pricing and volume adjustments according to changes in market conditions. Distrigas contended that this LNG is needed for peak shaving purposes and high priority uses. Further, Distrigas asserted that in consideration of the price increase, it had negotiated a reduction in take-or-pay obligation to Sonatrach, advantageous scheduling of cargoes, the revised calculation of Btu content, and settlement of past demurrage and dead-freight claims. All of this is asserted as providing greater flexibility by permitting DOMAC's customers to substitute LNG for more expensive alternative fuels such as propane at times of greatest demand. Distrigas further reported that, although specific volume adjustments under the supplemental agreement providing for increases or decreases in the annual contract quantities have not yet been made, it is confident that the agreement will be implemented. Distrigas therefore requested that the ERA take immediate action to approve its amendment.

On July 2, 1984, Boston Gas filed an answer to Distrigas' June 15, 1984, supplement expressing concerns about the pricing terms proposed in the amendment, about the removal of a contract provision concerning a market-price related index, and about the retroactive price adjustment provision contained in the amendment. Despite these problems, Boston Gas supports approval of the amendment, other than the retroactive pricing surcharge provision, subject to FERC approval of the reduction in Boston Gas' annual contract quantities set forth in the settlement agreement negotiated among Distrigas, DOMAC and its customers.

## II. Opportunity for Comment or Requests for Further Procedures

In light of the settlement reached among Distrigas, DOMAC, and its distribution company customers, the issuance of new import policy guidelines

subsequent to the filing of protests and interventions, and Distrigas' supplement to its application, the parties to this proceeding are requested to review their positions on Distrigas' application and to submit modifications of their positions, if any. Moreover, all parties are invited to comment on any issue that has been raised in this proceeding. The decision in this proceeding will be based on the information in the record supplemented by comments filed in response to this order.

The decision also will be made consistent with the Secretary of Energy's gas import policy guidelines.<sup>10/</sup> Thus, the competitiveness of this import arrangement in the markets served will be the primary consideration in determining whether the import arrangement is in the public interest. It is the intention of this agency to grant Distrigas' request for an amended authorization unless the parties opposing the amendment demonstrate in their comments that the arrangement is not competitive or does not otherwise comply with the policy guidelines.<sup>11/</sup>

If any party wants further proceedings, even if a previous request was filed, the request for the particular procedure should be included in the comments filed in response to this order, together with a discussion of how the procedure will illuminate the issues and advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

### Order

For the reasons set forth above, it is ordered that:

A. All petitions for leave to intervene, as set forth in Appendix A of the order, are hereby granted, subject to such rules of practice and procedure as may be in effect, provided that participation of intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions for leave to intervene as modified by their responses to Paragraph B of this Order. The admission of such intervenors shall not be construed as recognition by the ERA that they might be aggrieved because of any order issued in this proceeding.

B. Any party to this proceeding may file written comments on any issue raised in this proceeding. All comments shall be filed and served no later than 4:30 p.m., e.d.t., August 13, 1984.

C. Any party wishing to respond to the comments submitted by August 13,

1984, should file and serve those responses no later than 4:30 p.m., e.d.t., August 28, 1984.

D. All written submissions shall be filed with the Economic Regulatory Administration, Natural Gas Division, Room GA-033, RG-43, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Issued in Washington, D.C., on July 12, 1984.

--Footnotes--

1/ Opinion unpublished

2/ DOMAC's customers are Bay State Gas Company, The Berkshire Gas Company, Boston Gas Company, The Brooklyn Union Gas Company, The Connecticut Light and Power Company (formerly the Connecticut Gas Company), Fall River Gas Company, Essex County Gas Company (formerly Haverhill Gas Company), New Jersey Natural Gas Company, The Providence Gas Company, South Jersey Gas Company, and Valley Gas Company.

3/ Subsequent to filing this application, Distrigas (through its affiliate, DOMAC) agreed to extend this option to its customers. In its Abbreviated Application to Amend Certificate of Public Convenience And Necessity filed with the Federal Energy Regulatory Commission on May 17, 1983, in Docket No. CP-77-216-009, DOMAC states it ". . . will submit appropriate tariff sheets to provide the following changes: . . . A new DOMAC Rate Schedule GS-Option which allows participating customers to elect delivery of the equivalent of up to three additional cargoes of approximately 125,000 cubic meters per contract year . . . ."

4/ 47 FR 43111, September 30, 1982.

5/ Bay State Gas Company, The Berkshire Gas Company, The Brooklyn Union Gas Company, The Connecticut Light and Power Company (formerly the Connecticut Gas Company), Fall River Gas Company, Essex County Gas Company (formerly Haverhill Gas Company), New Jersey Natural Gas Company, The Providence Gas Company, South Jersey Gas Company, and Valley Gas Company.

6/ The agreement was filed with the Federal Energy Regulatory Commission as part of DOMAC's May 17, 1983, application to amend its Certificate of Public Convenience and Necessity in FERC Docket No. CP77-216 for its resale of the LNG to customers.

7/ 49 FR 6684, February 22, 1984.

8/ 49 FR 6691, February 22, 1984.

9/ Distrigas Corporation et al., Ruling on Motions to Extend Time for Filing Reports Pursuant to February 16, 1984 Order, ERA Docket No. 82-13-LNG et al., issued May 11, 1984, unpublished.

10/ 49 FR 6684, February 22, 1984.

11/ On July 11, 1984, the Council filed comments on Distrigas' June 15, 1984, supplement. The Council's comments will be considered as filed in response to this order. It may, of course, file further comments.

OFFICIAL SERVICE LIST  
DISTRIGAS CORPORATION  
82-13-LNG

APPLICANT

J. Alan MacKay  
General Counsel  
Distrigas Corporation  
125 High Street  
Boston, Massachusetts 02110

Sherman S. Poland  
William A. Mogel  
G. William Stafford  
Ross, Marsh and Foster  
888 Sixteenth Street, N.W.  
Washington, D.C. 20006

INTERVENORS

Boston Gas Company            J.T. McKenna  
Senior Vice President--Operations  
Boston Gas Company  
One Beacon Street  
Boston, Massachusetts 02108

L. William Law, Jr.  
General Counsel

Boston Gas Company  
One Beacon Street  
Boston, Massachusetts 02108

DOMAC Customer Group

Bay State Gas                      Charles T. Ellis  
Senior Vice President  
Bay State Gas Company  
120 Royall Street  
Canton, Massachusetts 02021

Berkshire Gas Company              Joseph T. Kelly  
President  
The Berkshire Gas Company  
P.O. Box 1388  
Pittsfield, Massachusetts 01201

Brooklyn Union Gas Company      Michael W. Hall  
Cullen and Dykman  
1019 19th Street, N.W.  
Washington, D.C. 20036

Edward J. Sondey  
Vice President  
The Brooklyn Union Gas Company  
195 Montague Street  
Brooklyn, New York 11201

New Jersey Natural Gas Company    Jack V. Richards, Jr.  
Senior Vice President  
New Jersey Natural Gas Company  
601 Bangs Avenue  
Asbury Park, New Jersey 07712

Providence Gas Company              Louis R. Hampton, President  
The Providence Gas Company  
100 Weybosset Street  
Providence, Rhode Island 02901

Robert H. Ferranty, Esquire  
Senior Vice President  
The Providence Gas Company

100 Weybosset Street  
Providence, Rhode Island 02901

South Jersey Gas Company      William C. Bingham  
Vice President  
South Jersey Gas Company  
One Jersey Plaza Route 54  
Folsom, New Jersey 08307

Valley Gas Company              Charles H. Goss  
President  
Valley Gas Company  
P.O. Box 1000  
Cumberland, Rhode Island 02864

Fall River Gas Company        Jack R. McCormick  
President  
Fall River Gas Company  
155 North Main Street  
Fall River, MA 02722

Essex County Gas Company      Charles E. Billups  
President Essex County Gas Company  
P.O. Box 500  
Amesbury, MA 01913

Connecticut Light and  
Power Company                  John J. Smith  
Vice President  
The Connecticut Light & Power  
Company  
56 Cooper Street  
Meriden, Connecticut 06450

Gary E. Guy  
Michael W. Hall  
Cullen and Dykman  
1019 Nineteenth Street, N.W.  
Washington, D.C. 20036

Algonquin Gas Transmission  
Company                          Dwight Curley, Vice President  
Marketing and Gas Supply

Algonquin Gas Transmission Company  
1284 Soldiers Field Road  
Boston, Massachusetts 02135  
McGee and Ketcham  
1019 Nineteenth Street, N.W.  
Washington, D.C. 20036

Massachusetts Energy  
Facilities  
Siting Council

Sonna Sorgi  
Deputy Chief, Utilities Division  
Dept. of the Attorney General  
One Ashburton Place, 19th Floor  
Boston, Massachusetts 02108  
617/727-1085

Lawrence W. Plitch, Esquire  
General Counsel  
Massachusetts Energy Facilities  
Siting Council  
100 Cambridge Street, Room 1506  
Boston, Massachusetts 02202  
617/727-1136