

Cited as "1 ERA Para. 70,123"

Distrigas Corporation (ERA Docket No. 82-13-LNG), December 5, 1984.

Order Providing Opportunity for Additional Comment

I. Project Description

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.^{2/}

The amendment, dated July 31, 1982, would revise the sales agreement to (1) increase the base F.O.B. price to \$4.44 per MMBtu as of August 27, 1982, the filing date of the application for amendment; (2) establish an F.O.B. price based on an average of six different crude oils, which is adjusted quarterly; (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;^{3/} (6) change the method of calculating the Btu content of the LNG with a resulting price reduction of about 5 cents per 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.

II. Procedural Background

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.^{4/} The ERA received four motions to intervene.^{5/}

The proposed changes in Distrigas' authorization were opposed by a number of DOMAC's distribution company customers, who objected in particular to the surcharge provision which would allow a retroactive rate increase. Subsequently, most of the concerns expressed by the intervenors were resolved by the parties and that resolution was announced in various filings submitted during the course of this proceeding. These submissions were described and discussed in a procedural order issued by the ERA on July 12, 1984.^{6/}

The July 12 order granted all of the petitions for intervention and requested that in light of developments over the preceding two years, the parties review their positions and submit any modifications. The ERA order also provided opportunity for the parties to comment further on any issue raised in the proceeding and to request additional procedures. An additional procedure was requested by Boston Gas Company (Boston Gas).

In comments filed on August 13, 1984, in response to the procedural order, Boston Gas stated that if its annual contract quantity (ACQ) was not substantially reduced, the amendment would not meet the public interest standard and would not comply with the Secretary of Energy's gas import policy guidelines ^{7/} as to marketability and competitiveness. Although Boston Gas supported ERA's granting of Distrigas' application, it requested that such authorization be conditioned upon FERC approval of the reduction in Boston Gas' ACQ,^{8/} and further conditioned upon Distrigas' negotiation, before 1986, of further reductions in its contract quantity with Sonatrach. Referring to its earlier filing of July 2, 1984, Boston Gas restated its opposition to the surcharge provision. Boston Gas further stated, "[i]f ERA is not prepared to withhold action on the amendment, or to condition approval of the amendment [as specified by Boston Gas], then ... ERA must hold a public hearing...".

On August 13, 1984, Brooklyn Union Gas Company (Brooklyn Union) filed comments supporting ERA approval of Distrigas' application, requesting that in its order the ERA require Distrigas to commence negotiations before January 1986 to improve the terms of its agreement with Sonatrach, including but not limited to the take-or-pay provision, and to report on the results of its negotiations by a date certain. Although Brooklyn Union did not raise the surcharge issue in its comments, the record shows it was a party to the joint petition filed on October 28, 1982, by the ten DOMAC customers (excluding Boston Gas) in which they moved for summary disposition denying the surcharge provision, or, in the alternative, ". . . that ERA establish appropriate procedures to permit development of the necessary facts and full ventilation of all views on this limited aspect of Distrigas' application."

On August 13, 1984, the remaining nine DOMAC customers jointly filed

comments supporting approval of Distrigas' application, except for the surcharge provision to make the amendment retroactive.

In its comments of August 10, 1984, the Massachusetts Energy Facilities Siting Council also supported approval of Distrigas' application, with the request that the ERA, ". . . place upon Distrigas an obligation in all future negotiations to use all due diligence to address issues such as price indexing, take-or-pay obligations, and costs related to reliability."

In its reply comments filed August 27, 1984, Distrigas responded specifically to each of the issues raised by the intervenors, except with respect to the surcharge provision, which was not addressed. We note, however, that the record shows that in its June 15, 1984 supplement, Distrigas asserted regarding the surcharge provision that, "[t]he amendment as agreed to is a package which includes an effective date as of the filing of Distrigas' application," and that, "the effective date is a necessary component of the competitive package." Concluding its reply comments, Distrigas further asserted that, "its proposed import arrangements are in compliance with the policy guidelines," and requested that its application be granted.

IV. Opportunity for Comment

The record is adequately developed with respect to all the issues relevant to this application except for the issue of a surcharge, which would retroactively impose the new F.O.B. price from the August 27, 1982, date of the filing of the application. The intervenors have opposed the surcharge provision, and Distrigas has asserted that it is an integral part of the proposed arrangement. However, the parties have not provided in their comments sufficient information for this agency to determine the merits of the opposition to or the need for the surcharge provision. Consequently, further comment from the parties on this issue is necessary and hereby solicited. The decision in the proceeding will be based on the information now in the record supplemented by comments filed in response to this procedural order.

All intervenors opposing the surcharge provision should explain, in as much detail as possible, the reasons for their opposition and the consequences of an amended import arrangement as filed by DOMAC. Additionally, they should explain the consequences of supply continuity problems that conceivably might result from the arrangement not being effectuated, as filed. Distrigas should explain more fully why the surcharge provision is a necessary component of the arrangement. Additionally, it should provide, in as much detail as possible, the consequences of the arrangement being disapproved because of the surcharge provision, or being approved without this provision, including the effect on

the continuity of supply.

Order

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

A. Any party to this proceeding may file written comments on the surcharge issue. All comments shall be filed and served no later than 4:30 p.m., e.s.t., January 21, 1985.

B. Any party wishing to respond to the comments submitted by January 21, 1985, should file and serve those responses no later than 4:30 p.m., e.s.t., February 11, 1985.

C. 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 December 5, 1984.

--Footnotes--

1/ Opinion unpublished, order unnumbered.

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. CP77-216-009, 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/ The intervenors were:

- (1) Boston Gas Company
- (2) Algonquin Gas Transmission Company
- (3) Massachusetts Energy Facilities Siting Council
- (4) DOMAC Customer Group (Joint petition)

Bay State Gas Company

The Berkshire Gas Company

The Brooklyn Union Gas Company

The Connecticut Light and Power Company

Fall River Gas Company

Essex County Gas Company

New Jersey Natural Gas Company

The Providence Gas Company

South Jersey Gas Company

Valley Gas Company

6/ 1 ERA Para. 70,122, Federal Energy Guidelines.

7/ 49 FR 6684, February 22, 1984.

8/ See Distrigas' certificate proceeding in FERC Docket No. CP77-216-009.