

Cited as "1 ERA Para. 70,587"

J. R. Simplot Company (ERA Docket No. 85-01-NG), February 26, 1985.

DOE/ERA Opinion and Order No. 74

Order Granting Authorization to Import Natural Gas from Canada

### I. Background

On January 8, 1985, the J.R. Simplot Company (Simplot), a food processing plant operator, filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act, to import natural gas from Canada. Simplot requested authorization to purchase up to 3,000 Mcf per day from Tricentrol Oil Limited (Tricentrol) of Calgary, Alberta, Canada, for a period of two years beginning on the date of first delivery. The purchase contract contains a provision allowing the parties to extend the term of their agreement. The cost of the imported gas will be U.S. \$2.98 per MMBtu; however, that price only applies to the first contract year and may be adjusted by mutual agreement in subsequent years. The contract entitles Simplot to specify the amount of gas it wants Tricentrol to provide each month, up to the maximum volumes contemplated by the agreement. There is no minimum purchase obligation, but Simplot is required to take and pay for those volumes it nominates for delivery.

Simplot intends to substitute gas for the No. 6 fuel oil it currently uses to supply most of the hydrocarbon energy needs of its potato products food processing plant located in Grand Forks, North Dakota. The gas will come from fields in Canada in which Tricentrol has a working interest and may or may not be the operator. Simplot states that Tricentrol has approximately 20 Bcf of undedicated reserves available for sale and has pledged up to 1.5 Bcf from this base for this proposed sale. If Tricentrol requires additional volumes to meet its contractual obligations, the firm will secure the necessary additional supplies from other Canadian producers. The imported volumes will be delivered at Emerson, Manitoba, to Midwestern Gas Transmission Company (Midwestern), transported by Midwestern through Minnesota into North Dakota, and delivered to Northern States Power Company (NSP) at the city gate of Grand Forks. NSP will deliver the gas to Simplot's plant in Grand Forks.

In support of the application, Simplot asserts that use of competitively priced natural gas is a cost-effective, efficient means of improving the economics of production at its facility which has had a history of being a marginal operation. Simplot also asserts that the proposed import,

transportation and delivery of natural gas can be accomplished at a significant savings over its present costs for fuel oil. Furthermore, no additional pipeline construction is needed to implement the proposed import.

According to the applicant, the import is in the public interest because it will (1) eliminate the company's requirement for No. 6 fuel oil, thus freeing that mil for use by other purchasers, (2) increase revenues for the transporting pipelines, and (3) reduce the food processing plant's operating costs.

Simplot maintains that the arrangement is market responsive because the \$2.98 per MMBtu purchase price for the gas is competitive with the lowest-priced natural gas available to it and is considerably lower in price than No. 6 oil which is its primary fuel. In addition, the purchase agreement allows for adjustments in the price to respond to the changing prices of competing energy sources.

## II. Interventions and Comments

A notice of Simplot's application was issued on January 16, 1985.<sup>1/</sup> The notice invited protests and petitions to intervene, which were to be filed by February 25, 1985. The ERA received one motion to intervene from Northern States Power Company (NSP) who expressed no opposition to the application and did not request a hearing. This order grants intervention to NSP.

NSP, who intervened as the local distribution company serving Simplot's plant in Grand Forks, North Dakota, stated that under governing North Dakota tariffs, ". . . NSP may not transport gas for an end user that would displace a sale of gas that NSP would otherwise expect to make under retail gas sales tariffs." NSP asserts that it has offered gas service to Simplot effective March 1, 1985, that would provide for a price of gas that would be competitive with the price of No. 6 fuel oil. NSP further asserts that as of February 20, 1985, Simplot had not executed a contract for transportation service with NSP.

## III. Decision

Simplot's application has been evaluated in accordance with the Administrator's authority to determine if the proposed import arrangement meets the public interest requirements of Section 3 of the Natural Gas Act. Under Section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest."<sup>2/</sup> The Administrator is guided by the Secretary of Energy's policy relating to the regulation of natural gas imports.<sup>3/</sup> Under these policy guidelines, the competitiveness of

an import arrangement in the markets served is the primary consideration for meeting the public interest test. The need for the import and the security of the import supply are other considerations.

Simplot's arrangement fully comports with this public interest test. The terms and conditions of the contract between Simplot and its supplier, Tricentrol, are flexible and provide assurance that the imported gas will remain competitive over the contract period. The volumes will be imported on a short-term basis and at a proposed rate competitive with the lowest-priced natural gas available to Simplot and less expensive than the No. 6 fuel oil it currently uses. Deliveries will be on a best efforts basis as requested by Simplot in monthly volume nominations; Simplot is obliged to purchase only such nominated volumes. Furthermore, after the first contract year, the agreement permits the parties to adjust the initial purchase price of the gas to reflect market conditions at the time. These and the other contract terms and conditions, taken together, demonstrate that the arrangement is competitive.

Furthermore, it is recognized that NSP has offered gas to Simplot effective March 1, 1985, at a price competitive with No. 6 fuel oil. This affords Simplot another source of gas in addition to this import. The best efforts nature of the import will enable Simplot to take the most price-competitive gas available to it.

As set forth in the gas import policy statement, the question of the need for an import is answered by its competitiveness. The security of this import supply is not a major issue as the gas is to be purchased on a short-term basis. Simplot has also demonstrated that its supply of natural gas would be reliable inasmuch as its annual requirement is not large and will be supplied by Tricentrol from its own available reserves, or by Tricentrol's securing from other Canadian producers Simplot's needs in excess of what Tricentrol can provide. Finally, the proposed import involves only existing facilities.<sup>4/</sup>

After taking into consideration all information in the record of this proceeding, I find that the authorization requested by Simplot is not inconsistent with the public interest and thus should be granted.

#### Order

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

A. Simplot is authorized to import up to 3,000 Mcf of Canadian natural gas per day for a two-year period beginning on the date of first delivery in accordance with the pricing and other provisions established in the contract submitted as part of its application.

B. Simplot shall notify the ERA in writing of the date of first delivery within two weeks after deliveries begin.

C. Simplot shall file with the ERA the terms of any renegotiated price that may become effective after the initial 12-month period within two weeks after the effective date of the renegotiated term.

D. The motion for leave to intervene, as set forth in this Opinion and Order, is hereby granted, subject to the administrative procedures in 10 CFR Part 590, provided that participation of the intervenor shall be limited to matters affecting asserted rights and interests specifically set forth in its motion for leave to intervene and not herein specifically denied, and that the admission of such intervenor shall not be construed as recognition that it might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., February 26, 1985.

--Footnotes--

1/ 50 FR 3381, January 24, 1985.

2/ 15 U.S.C. Sec. 717b.

3/ 49 FR 6684, February 22, 1984.

4/ Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application is not a Federal action significantly affecting the quality of the environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, et seq.) and therefore an environmental impact statement or environmental assessment is not required.