

Cited as "1 ERA Para. 70,594"

Dome Petroleum Corporation (ERA Docket No. 85-03-NG), April 29, 1985.

DOE/ERA Opinion and Order No. 78

Order Granting Authorization to Import Natural Gas From Canada and Granting Intervention

I. Background

On January 16, 1985, Dome Petroleum Corporation (Dome Corp.) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for authorization to import up to 3,300 Mcf per day and up to 1 Bcf per year of Canadian natural gas from Dome Petroleum Limited (Dome Ltd.). The applicant is a wholly-owned U.S. subsidiary of Dome Ltd., a Canadian natural gas producer and corporation. Under the import proposal, Dome Corp. would purchase the gas for resale to St. Regis Corporation (St. Regis) over a period of two years commencing on the date of first delivery. The imported gas is intended to displace No. 6 fuel oil used at St. Regis' Tacoma, Washington, pulp and paper mill.

The imported volumes would enter the U.S. at a point near Sumas, Washington, by means of existing pipeline facilities owned and operated by Northwest Pipeline Corporation (Northwest). Northwest would then transport the gas to the distribution facilities of Washington Natural Gas Company (Washington Natural), which would complete ultimate delivery to St. Regis' facility. According to the application, no new facilities will be required to implement the proposed import. Dome Corp. indicates that it is currently negotiating with Northwest and Washington Natural for transportation services.

The gas purchase contract executed by St. Regis and Dome Ltd. on October 17, 1984, entitles St. Regis to purchase up to the maximum daily and annual volumes requested for authorization but imposes no minimum purchase obligation or take-or-pay requirement. Deliveries will be on a "reasonable efforts" basis by Dome Ltd., as requested by St. Regis in monthly volume nominations. Dome Corp. has indicated that an agreement assigning this contract to it currently is being prepared, as well as an import agreement between it and Dome Ltd. Both agreements will be submitted as supplementary filings upon execution.

Under the purchase agreement, the price Dome Ltd. would be paid for the gas at the international border will be the price charged by the applicant to St. Regis, less the sum of the distribution tariff of Washington Natural,

included associated taxes, the transmission tariff of Northwest, and the margin to be retained by the applicant. Dome Corp. estimated the initial price paid at the border would be \$3.20 (U.S.) per MMBtu. The initial delivered price to St. Regis under the purchase agreement would be \$4.00 (U.S.) per MMBtu. The price St. Regis would pay for the gas would be adjusted on a monthly basis to reflect any fluctuation in the price of No. 6 high sulfur residual fuel oil in the Seattle-Tacoma area.

In support of its application, Dome Corp. stated that the import arrangement it proposes would be competitive and not inconsistent with the public interest. The applicant maintained that it has negotiated an arrangement that is designed to serve a carefully and specifically defined incremental market at market-oriented and flexible price and volume terms. Therefore, it asserted that this import conforms with the DOE's gas import policy guidelines.^{1/} Dome Corp. further asserted that the purchase price for the gas would be sufficiently attractive to encourage St. Regis to convert from high sulfur fuel oil to cleaner burning natural gas with attendant positive impact upon the environment.

II. Interventions and Comments

A notice of the application was issued on February 6, 1985.^{2/} The notice invited protests and petitions to intervene, which were to be filed by March 18, 1985. The ERA received one motion to intervene from Washington Natural, the aforementioned gas distribution company which serves customers in the State of Washington from supplies purchased mainly from Northwest. This order grants intervention to Washington Natural.

Washington Natural does not expressly oppose the application but does express certain reservations regarding the proposal. Washington Natural's principal concern is that "[t]he Dome-St. Regis sale erodes Northwest's potential natural market base, and impedes its [Northwest's] ability to meet take and pay for requirements under its Westcoast [Transmission Company Ltd.] contract." Washington Natural contends that this would adversely affect it as a distribution customer of Northwest.^{3/} In order to mitigate this anticipated effect, Washington Natural requests that ERA condition any order approving the proposed import on a requirement that the volumes sold to St. Regis be credited against Northwest's annual obligations to purchase gas from Westcoast.

Washington Natural also asserts that there have been no negotiations between Washington Natural and the applicant or Washington Natural and St. Regis concerning transportation of the St. Regis gas through Washington

Natural's distribution facilities, and Washington Natural claims that it does not have any existing tariff for such service. Washington Natural also alleges that there are no negotiations pending between Northwest and the applicant for transportation from the border to the point of connection with Washington Natural's distribution systems. Washington Natural contends that after backing out taxes, the proposed border price of \$3.20, and Northwest's proposed transportation charge from the \$4.00 delivery price to St. Regis, a balance of only 33 cents per MMBtu remains, which falls far short of covering Washington Natural's fixed costs associated with such service.

III. Decision

Dome Corp.'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." 4/ The Administrator is guided by the DOE's policy relating to the regulation of natural gas imports.^{5/} Under these policy guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

Washington Natural states it does not challenge the competitiveness of the applicant's import proposal but argues other factors warrant consideration in the public interest. However, its principal concern is that the applicant proposes a sale to a market Northwest and Washington Natural would like to occupy. It is particularly concerned about the impact of the proposed sale on Northwest's take-or-pay obligations and the ramifications of this impact on its own operations. Washington Natural wants insulation from this competition, and to this end requests that the ERA impose restrictions on the Dome Corp. import arrangement.

We understand Washington Natural's desire to protect and expand its market. Nevertheless, the policy of this agency is to promote competition and not to limit it. Washington Natural and Northwest must utilize the tools and options available to them to adjust and respond to the market, rather than rely on government regulation for protection. One of the options may be to negotiate with other affected parties concerning Northwest's and Westcoast's minimum take agreement. However, this proceeding is not the appropriate place for such negotiation to occur. We note, moreover, that there is no contractual relationship between this import arrangement and the Northwest-Westcoast arrangement. The intervenor is requesting an adjustment for a take-or-pay obligation in a commercial relationship to which the applicant and its

supplier are not parties. The ERA strongly encourages the parties to work out their concerns with each other rather than seek to have the government impose a solution. The ERA will not impose such a condition on Dome Corp., and Washington Natural's request that such a condition be imposed is denied.

The ERA does not have jurisdiction over the interstate transportation rates and tariff matters raised by the intervenor. The appropriate place for Washington Natural to express its concerns is in presently pending or other relevant proceedings before the FERC.^{6/} Furthermore, the existence of firm transportation contracts is not germane to the decision of whether to approve an import authorization.

The ERA finds that the applicant's arrangement fully comports with the public interest test. No one has challenged the competitiveness of the proposed import. The terms and conditions of the contract between Dome Ltd. and St. Regis (to be assigned to the applicant by Dome Ltd.) 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 natural gas available to St. Regis and less expensive than the No. 6 fuel oil it currently uses. Deliveries will be on a reasonable efforts basis as requested by St. Regis in daily and annual volume nominations; there is no minimum purchase or take-or-pay obligation. Furthermore, the agreement permits the parties to adjust the initial purchase price of the gas on a monthly basis to reflect market conditions at the time. These and the other contract terms and conditions, taken together, demonstrate that the arrangement is flexible and that the gas will only be imported when it is fully competitive.^{7/}

Moreover, the gas import policy guidelines recognize that the need for an import is a function of competitiveness. Under the competitive arrangement described above, it is presumed that St. Regis will purchase the gas only to the extent it needs such volumes for its plant operations. The security of the import supply is not a major issue because the gas is to be purchased on a best-efforts, interruptible basis.

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

Order

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

A. Dome Petroleum Corporation (Dome Corp.) is authorized to import up to 3.3 MMcf per day and up to a maximum annual volume of 1 Bcf of Canadian natural gas for a two-year period beginning on the date of first delivery for resale to St. Regis Corporation in accordance with the pricing and other provisions established in the contract submitted as part of its application.

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

C. Dome Corp. shall file with the ERA in the month following each quarter, quarterly reports showing by month the quantities of gas imported and the average price on an MMBtu basis paid for such gas.

D. The motion 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 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., April 29, 1985.

--Footnotes--

1/ 49 FR 6684, February 22, 1984.

2/ 50 FR 6237, February 14, 1985.

3/ In the context, Washington Natural also comments on proceedings pending before the Federal Energy Regulatory Commission (FERC). Northwest has filed a general rate increase application (Docket No. RP85-13-000) that includes a special incentive rate. The rate filing would enable Northwest to transport gas, on an interruptible basis, on behalf of an end-user, local distribution company, interstate pipeline company or intrastate pipeline. Washington Natural believes a proposed settlement of the case, if approved, would enable it to compete with the price of No. 6 fuel oil and the services offered to St. Regis by Dome Corp. In addition, Washington Natural indicates the FERC staff recently took a position against the passthrough of the demand-commodity pricing rates contained in Northwest's recently renegotiated contract with Westcoast. If the new rate structure is not approved by the FERC, Washington Natural predicts further limitations on the ability of Northwest to price its gas competitively.

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

5/ See supra note 1.

6/ FERC Docket Nos. RP81-47-000, RP85-11-000, and RP85-13-000.

7/ Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application clearly is not a 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.) and therefore an environmental impact statement or environmental assessment is not required.