

Cited as "1 ERA Para. 70,600"

Bethlehem Steel Corporation (ERA Docket No. 85-09-NG), June 3, 1985.

DOE/ERA Opinion and Order No. 84

Order Granting Authorization to Import Natural Gas from Canada

I. Background

On April 4, 1985, Bethlehem Steel Corporation (Bethlehem) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act, for authorization to import up to 12 Bcf of Canadian gas over a period ending November 1, 1986. Bethlehem and Northridge Petroleum Marketing, Inc. (Northridge) entered into a gas sales agreement dated February 22, 1985. Under the agreement, Northridge would make available on a best-efforts, interruptible basis up to 25 MMcf of gas per day 6 Bcf per year, up to 12 Bcf for the period ending November 1, 1986. Bethlehem would attempt to take an average of 15 MMcf of gas per day on a best-efforts basis, although it may take all the gas Northridge has available up to 25 MMcf per day. Although the primary term of the contract extends through November 1, 1986, it is automatically extended for successive two-year terms unless terminated by either party giving 60-days notice prior to the expiration of a term.

Deliveries under the contract will begin on the first day of the month following the month in which all necessary approvals are received unless this occurs during the last five days of the month. In that case, deliveries would commence on the first day on the second month following the month in which approvals are received.

The price at the point of importation initially will be \$2.87 (U.S.) per Mcf and will be subject to renegotiation at any time by either party giving the other 30-days notice. The contract also provides for renegotiation at any time if the price netted back to Empress, Alberta, is lower than the Alberta border price set monthly by the Alberta Petroleum Marketing Commission. There is no minimum purchase obligation and the only take-or-pay requirement relates to volumes nominated by Bethlehem and actually delivered by Northridge to the intervening transporters at the time of contract termination. Sales and deliveries will be on a best-efforts basis by Northridge, as requested by Bethlehem in monthly volume nominations. Bethlehem retains the right to restrict or cease taking the imported supplies at any time and for so long as it deems it expedient to do

so.

Bethlehem maintains that the importation will be in the public interest. It asserts that the importation will place downward pressure on high-cost domestic suppliers. Bethlehem alleges that this downward price pressure ultimately benefits the residential, commercial and industrial customers of the local distributing companies which purchase from such domestic suppliers by fostering lower-priced natural gas supplies. Also, there is nothing in its contract to prevent Bethlehem from switching to alternate lower-priced gas supplies or to other alternate fuels.

According to Bethlehem's application, the Canadian gas will come from reserves owned or controlled by producers in the Province of Alberta, Canada, or from such other sources as may be required from time to time. No new facilities will be required to implement the proposed importation. The imported volumes will be transported for Northridge by NOVA, an Alberta Corporation, to the Alberta border and thereafter will be transported to the international boundary at Emerson, Manitoba, by TransCanada PipeLine Limited. Bethlehem states that there are five potential transporters within the United States that have indicated a willingness to transport the gas for Bethlehem through existing pipeline facilities--ANR Pipeline Company, Great Lakes Transmission Company, Northern Natural Gas Company, Natural Gas Pipeline Company of America (Natural) and Midwestern Gas Transmission Company. No final transportation agreements had been reached at the date of the applicant's filing. The gas would ultimately be delivered to the Northern Indiana Public Service Company (NIPSCO), the existing utility supplier of Bethlehem's Burns Harbor, Indiana plant, for redelivery to Bethlehem.

The gas to be imported would initially displace a portion of the gas being purchased from MidCon Ventures, Inc. (MidCon), an affiliate of Natural. Under the MidCon arrangement, Bethlehem is currently purchasing up to 25 MMcf per day delivered to the Burns Harbor plant by Natural and NIPSCO. The MidCon gas began flowing on September 1, 1984, according to Bethlehem.

II. Interventions and Comments

A notice of Bethlehem's application was issued on April 10, 1985, inviting protests and motions to intervene to be filed by May 23, 1985.^{1/} Motions to intervene were filed by Natural, NIPSCO, and Northern Natural Gas Company, Division of Inter-North, Inc. (Northern).

Northern, an interstate pipeline company serving the midwestern region of the United States and a potential transporter of the proposed

import, intervened in its own direct interest but made no other comment. NIPSCO stated that, while it did not oppose Bethlehem's application, it strongly disagreed with Bethlehem's assertion that the import is needed to improve its reliability of supply and to exert pressure on NIPSCO to acquire lower-priced supplies to remain competitive. NIPSCO asserted that it has been supplying reliable service to Bethlehem for many years, will continue to do so, and that its industrial rates are already highly competitive. Natural, a major pipeline supplier to NIPSCO, intervened and protested the application on the grounds that unfair competition would result from the proposed import, but did not request further proceedings. This order grants intervention to all movants.

III. Decision

Bethlehem's application has been reviewed to determine if it conforms with Section 3 of the Natural Gas Act. Under Section 3, an import is to be authorized unless there has been a finding that the import "will not be consistent with the public interest." 2/ In making this finding, the Administrator of the ERA is guided by the statement of policy issued by the DOE relating to the regulation of natural gas imports.^{3/} Under this policy, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

In its motion to intervene and protest, Natural stated that unfair competition would result if Bethlehem's application were approved. Natural asserted that Bethlehem's price of \$2.87 (U.S.) per Mcf is significantly lower than that available to Natural from its Canadian suppliers because the proposed import was not subjected to the same Canadian floor price limitations as its arrangement was. Natural expressed concern that Bethlehem's import could have the anomalous effect of backing out firm sales of Canadian gas. Natural asserted that such action could undermine negotiations completed by long-term purchasers to bring prices more in line with market forces. Natural urged that the ERC give careful consideration to the effect of spot sales on long-term supplies.

The ERA believes that the competitiveness of an import is of prime concern. The policy of this agency is to promote competition, and the applicant's import brings new and positive competitive forces to its marketplace. Purchasers will avail themselves of short-term arrangements when they are competitive with available long-term arrangements. The ERA has ruled in numerous import cases that it does not intend to protect long-term import arrangements from competition.^{4/} Natural has options available to it to meet competition, as do other pipelines. Natural has indicated that the new

prices under its contracts were the result of direct negotiations to bring prices more in line with market forces. Natural may continue to pursue such options.

Natural alleged that the proposed import could undermine negotiations completed by long-term purchasers to bring prices more in line with market forces. The ERA is not persuaded by this argument. The Canadian government and gas industry are moving to correct price disparities that have existed for the past several years between U.S. and Canadian supplies serving U.S. markets. There has been no sign of reluctance by Canadian exporters to negotiate in response to competition, and it is unlikely that the competition from the Bethlehem/Northridge arrangement will change this.

Natural claimed that unfair competition would result if the proposed import is approved because the \$2.87 (U.S.) per Mcf price Bethlehem will pay is significantly lower than that available to Natural because of differing floor prices imposed by Canada on Natural's and Bethlehem's contracts. While the DOE has urged the Canadian government remove floors from its export prices, the ERA does not intend to disapprove import arrangements that are competitive and that put pressure on other arrangements to become more competitive.

The Bethlehem arrangement for the import of Canadian gas, as set forth in the application, is wholly consistent with the DOE policy guidelines. The volumes will be imported on a short-term, interruptible basis. No minimum purchase provisions or take-or-pay obligations are included in the contracts. There are renegotiation provisions and adjustments as necessary to enable response to market changes over the term of the arrangement. These components of the arrangement, taken together, provide sufficient flexibility to ensure that the gas will only be imported when it is fully competitive.

The gas import policy guidelines recognize that the need for an import is a function of competitiveness. Under this best-efforts, interruptible arrangement, Bethlehem will opt to purchase gas only to the extent it is competitive with other fuels at its plant. The security of this import supply is not an issue here because of the short-term, interruptible nature of the contract.

After taking into consideration all of the information in the record of this proceeding, I find that the authorization requested by Bethlehem is not inconsistent with the public interest and should be granted.^{5/}

Order

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

A. Bethlehem Steel Corporation is authorized to import up to 25 MMcf per day and up to 12 Bcf of Canadian gas during the period beginning on the date of issuance, and ending November 1, 1986, in accordance with the provisions of the contract submitted as part of the application.

B. Bethlehem shall notify the ERA in writing of the date of the first delivery of gas authorized in ordering paragraph A within two weeks after deliveries begin.

C. Bethlehem shall file with the ERA in the month following each calendar quarter, quarterly reports showing, by month, the quantities of natural gas imported under this authorization, and the price per Mcf paid for those volumes.

D. The motions to intervene as set forth in this Opinion and Order, are hereby granted, subject to the administrative procedures in 10 CFR Part 590, provided that participation of the intervenors shall be limited to matters specifically set forth in their motions to intervene and not herein specifically denied, and that the admission of such intervenors shall not be construed as recognition that they might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., June 3, 1985.

--Footnotes--

1/ 50 FR 15958, April 23, 1985.

2/ 15 U.S.C. Sec. 717B,

3/ 49 FR 6684, February 22, 1984.

4/ See Northwest Natural Gas Company, DOE/ERA Opinion and Order No. 65, issued December 10, 1984 (1 ERA Para. 70,577); Cascade Natural Gas Corporation, DOE/ERA Opinion and Order No. 66, issued December 10, 1984 (1 ERA Para. 70,578); Southwest Gas Corporation, DOE/ERA Opinion and Order No. 49, issued December 18, 1984 (1 ERA Para. 70,581); Cabot Energy Supply Corporation, DOE/ERA Opinion and Order No. 72, issued February 26, 1985 (1

ERA Para. 70,124); Northwest Alaskan Pipeline Company, DOE/ERA Opinion and Order No. 73, issued February 26, 1985 (1 ERA Para. 70,585); and Tenngasco Exchange Corporation and LHC Pipeline Company, DOE/ERA Opinion and Order No. 80, issued May 6, 1985 (1 ERA Para. 70,596).

5/ The DOE has determined that because existing pipeline facilities will be used and no new construction is being undertaken specifically for this import, 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.