

Cited as "1 ERA Para. 70,623"

Frito-Lay, Inc. (ERA Docket No. 85-35-NG), January 27, 1986.

DOE/ERA Opinion and Order No. 105

Order Granting Authorization to Import Natural Gas from Canada

Background

On December 4, 1985, Frito-Lay, Inc. (Frito-Lay), a Delaware corporation, filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act (NGA), for authorization to import up to 2000 MMBtu of Canadian natural gas per day and a maximum of 1,460,000 MMBtu over a two-year period from December 31, 1985, to December 31, 1987. The gas would be imported on a best-efforts basis for use in Frito-Lay's food processing plants in Vancouver, Washington, and Beaverton, Oregon.

Frito-Lay proposes to import gas supplied by POCO Petroleum, Ltd. (Poco) with transportation provided by Northwest Pipeline Corporation (Northwest) and Northwest Natural Gas Company (Northwest Natural), Frito-Lay's current local supplier. While the necessary transportation arrangements are not yet in place, Frito-Lay has concluded the purchase contract with Poco, providing for a border price of \$2.25 (U.S.) per MMBtu. Other provisions are designed to ensure that the gas will remain competitively priced. Frito-Lay notes that there are no take-or-pay requirements or demand charges, and that if the delivered price of Poco's gas to Frito-Lay's plants is not at least as low as that of gas from Northwest Natural or from another Canadian or U.S. supplier, Frito-Lay has the option of renegotiating the price within 30 days or terminating the contract. Thus, although the price of gas may decline under the contract's provisions, the border price cannot exceed \$2.25 (U.S.) per MMBtu for the term of the contract.

In support of its application, it is Frito-Lay's opinion that its ability to acquire lower cost gas supplies will place downward pressure on domestic supplies currently priced above market-clearing levels. Also, Frito-Lay believes that the contract clause tying market-out provisions to the delivered price of gas protects Frito-Lay against increases in transportation charges that might make the gas uncompetitive. Frito-Lay further states that no new facilities would be required to deliver the gas.

The ERA issued a notice of the application on December 16, 1985,

inviting protests, motions to intervene, or comments to be filed by January 21, 1985.^{1/} A motion to intervene, without comment or request for further procedures, was received from Northwest. This order grants intervention to the movant.

II. Decision

The application filed by Frito-Lay 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 NGA. Under Section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest."^{2/} The Administrator is guided by the DOE's natural gas import policy guidelines.^{3/} Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test.

Frito-Lay's arrangement for the import of Canadian gas, as set forth in the application, is consistent with the DOE policy guidelines. No party objected to the proposed import. Frito-Lay, the purchaser and user of the gas, finds the price at the international border to be low enough to make the delivered price competitive, and there are contract provisions for either quick contract termination or reductions in the border price if the price from any other available supplier falls below the price under this contract. Thus, this arrangement will enhance competition in the market place.

After taking into consideration all the information in the record of this proceeding, I find that granting Frito-Lay authority to import up to 2000 MMBtu of Canadian natural gas per day and a maximum of 1,460,000 MMBtu over a term of two years is not inconsistent with the public interest.^{4/}

ORDER

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

A. Frito-Lay, Inc. (Frito-Lay) is authorized to import up to a total volume of 2000 MMBtu of Canadian natural gas per day and a maximum of 1,460,000 MMBtu over a two-year period from December 31, 1985, to December 31, 1987, consistent with the application filed in this docket.

B. Frito-Lay shall notify the ERA in writing of the date of first delivery of natural gas imported under Ordering Paragraph A above within two weeks after the date of such delivery.

C. With respect to the imports authorized by this Order, Frito-Lay shall file with the ERA the terms of any renegotiated price that may become effective during the term of the authorization within two weeks after the effective date of the renegotiated price.

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 specifically set forth in its motion 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., on January 17, 1986.

--Footnotes--

1/ 50 FR 51905, December 20, 1985.

2/ 15 U.S.C. §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 clearly not a major 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.