

Cited as "1 ERA Para. 70,648"

Koch Hydrocarbon Company (ERA Docket No. 86-13-NG), May 22, 1986.

DOE/ERA Opinion and Order No. 125

Order Granting Blanket Authorization To Import Natural Gas From Canada

### I. Background

On February 24, 1986, Koch Hydrocarbon Company (Koch) 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 blanket authorization to import up to 100,000 Mcf of Canadian natural gas per day, or a total of 182.5 Bcf over a five-year period, beginning on approval of its application. The applicant, a corporation registered in the state of Kansas, is an operating division of Koch Industries, Inc.

Koch proposes to import gas from affiliated and unaffiliated sources in Canada for spot and short-term sales. The customers are expected to be a wide range of U.S. consumers. Koch states that it will import gas at rates which, when delivered, will be competitive with the rates domestic gas suppliers charge to their customers.

The applicant proposes to file quarterly reports with the ERA, within 45 days following each calendar quarter on a confidential basis. Each report would show the quantities of gas imported, suppliers, and the average price paid per MMBtu.

Koch anticipates that no additional facilities will be necessary to import the Canadian gas as existing transmission, delivery and storage facilities will be utilized.

In support of its application, Koch asserts that the proposed import will be competitive and that the rates and terms of each arrangement will be the product of negotiations between Koch, its Canadian suppliers, and U.S. customers. Koch maintains that this approach ensures that the arrangement will be flexible and competitive.

The ERA issued a notice of the application on March 7, 1986, with protests, motions to intervene, or comments to be filed by April 14, 1986.<sup>1</sup> Motions to intervene, without comment or request for additional procedures,

were received from El Paso Natural Gas Company, Northwest Pipeline Corporation, and Pacific Gas Transmission Company. This order grants intervention to these movants.

## II. Decision

The application filed by Koch 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.<sup>3/</sup> Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test.

Koch has proposed certain modifications to those conditions the ERA imposes on blanket authorizations to safeguard the public interest. First, Koch has proposed to file reports with the ERA on a confidential basis within 45 days following each calendar quarter rather than on the non-confidential, 30-day basis currently required. It is the ERA policy that disclosure of the specific terms of sales under a blanket authorization, details which are not available at the time of authorization, enables the public to evaluate the import arrangement and to comment on both the specific arrangement and the blanket authorization vehicle as a more general matter. Absent a demonstration the information is confidential and disclosure would result in competitive harm, a demonstration Koch has not made, we will not extend confidential treatment to the reports. Further, Koch provides no reason to justify a special extension of the 30-day report filing requirement. Accordingly, the proposed modifications to the reporting requirement are denied.

We are also denying Koch's request for a five-year authorization. The two-year limit on the term was consideration imposed in recognition of the experimental nature of the blanket authorization. We still consider this an important condition and Koch offers no reason sufficiently compelling to diverge from this policy. It gives the ERA an opportunity to review the impact of the blanket program after a reasonable period of time. We note that, assuming the blanket authorizations operate as envisaged, Koch may request and receive an extension of this blanket authorization. Also, to be consistent with previous authorizations, the term will commence on the date of first delivery rather than on approval of the application. The authorization sought will provide Koch with blanket import authority to negotiate and transact individual, short-term sale arrangements without further regulatory action.

Apart from the proposed modifications of the conditions discussed above, the Koch arrangement for the import of Canadian gas is consistent with the DOE policy guidelines. The fact that each spot sale will be voluntarily negotiated, short-term, and market-responsive, as asserted in Koch's application, provides assurance that the transactions will be competitive. Under the proposed import, Koch customers will only purchase gas to the extent they need such volumes and the price is competitive. 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 Koch blanket authority to import up to 100,000 Mcf of Canadian natural gas per day, or 73 Bcf over a two-year period, is not inconsistent with the public interest.<sup>4/</sup>

### ORDER

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

A. Koch Hydrocarbon Company (Koch) is authorized to import up to a total volume of 100,000 Mcf of Canadian natural gas per day, or 73 Bcf over a two-year period, beginning on the date of first delivery.

B. Koch 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, Koch shall file with the ERA within 30 days following each calendar quarter, quarterly reports indicating whether sales of imported gas have been made and, if so, giving by month the total MMcf of the imports and the average purchase price per MMBtu at the border. The reports shall also provide the details of each transaction including the names of the sellers and purchasers, estimated or actual duration of the agreements, transporters, points of entry, markets served and, if applicable, any demand/commodity charge breakdown of the contract price, any special contract price adjustment clauses, or take-or-pay and make-up provisions.

D. Koch's request for confidential treatment of the reports that it is to file under Ordering Paragraph C is hereby denied.

E. The motions to intervene as set forth in this Opinion and Order are hereby granted, 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. on May 27, 1986.

--Footnotes--

1/ 51 FR 8696, March 13, 1986.

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, the 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.