

Cited as "1 ERA Para. 70,132"

Distrigas Corporation (ERA Docket No. 88-37-LNG, ERA Docket No. 88-05-LNG),  
September 16, 1988.

DOE/ERA Opinion and Order No. 271

Order Granting Amended Long-Term Authorization to Import LNG from Algeria, Amending  
a Short-Term Authorization, and Granting Interventions

### I. Background

On June 22, 1988, Distrigas Corporation (Distrigas) 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), to amend its existing liquefied natural gas (LNG) import authorization. Distrigas requested that its current authorization to import LNG from Algeria be amended to reflect changes in its 1976 contract with its supplier, Sonatrach, the Algerian national energy corporation.

The ERA granted import authorization to Distrigas on December 31, 1977, in ERA Docket No. 77-011-LNG,<sup>1/</sup> allowing Distrigas to import Algerian LNG pursuant to an April 13, 1976, sales and purchase agreement (1976 Agreement) between Distrigas and Sonatrach. As a result of a comprehensive process of contract renegotiation, and as part of an overall settlement of disputes and claims arising from the 1976 agreement,<sup>2/</sup> Distrigas and Sonatrach reached an agreement styled "amendment No. 3 to the Agreement for the Sale and Purchase of Liquefied Natural Gas of April 13, 1976 (Amendment No. 3)."

Amendments No. 3 contemplates the importation of 17 cargoes of LNG annually for a term running from September 15, 1988, through October 1, 2003. The amendment eliminates the prior pricing formula of the 1976 Agreement and adopts instead a market-oriented concept in which Distrigas and Sonatrach, acting through its wholly owned subsidiary, Sonatrading Amsterdam B.V. (Sonatrading), establish the price for the LNG supplied by Sonatrading at the higher of: (1) the reference price, which is 63 percent of a price derived from a formula utilizing the price of alternative fuels, (2) the minimum price, which is \$1.475 per MMBtu for the contract year September 15, 1988, through September 14, 1989, and increases annually up to \$1.730 per MMBtu after September 15, 1991, or (3) 63 percent of the actual sales price received by Distrigas' affiliate, Distrigas of Massachusetts (DOMAC), for the LNG. The following is a list of prices that have been derived by applying the reference price formula during the 1987/1988 winter months:

Formula	Reference Price (63% of
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Month	Price (\$/MMBtu)	Formula Price) (\$/MMBtu)
October 1987	3.108	1.966
November 1987	3.160	1.998
December 1987	3.073	1.943
January 1988	3.045	1.925
February 1988	2.971	1.879
March 1988	2.792	1.766

The average reference price (FOB price) for 1987-1988 would have been \$1.923 per MMBtu. After March 15 of each contract year the price for the LNG can be established by mutual agreement.

The transportation costs of the LNG are dealt with in a separate transportation agreement. The transportation cost is derived by an adjustable formula but would be approximately \$0.27 per MMBtu.

Amendment No. 3 eliminates the strict take-or-pay provisions of the 1976 Agreement. Although the amended agreement calls for Distrigas to take and pay for a minimum of nine of the 17 annual cargoes of LNG, and contemplates the sale of those nine cargoes during the winter months (September 15 through March 15), Distrigas is not obligated to take any cargo if, ten days prior to shipping, the reference price is lower than the minimum price. In addition, in the event any of the nine minimum cargoes are scheduled for delivery after March 15 of any contract year, the price shall be as agreed to by Distrigas and Sonatrading.

Amendment No. 3 also includes a make-up provision that would allow Distrigas, to the extent that it took less than 17 cargoes of LNG during a contract year, to purchase additional quantities of LNG in succeeding year(s) until the total of such additional purchases equals the amount by which the original purchases were less than the 17 cargoes of LNG. Further, if at the end of the contract term there are still quantities of LNG remaining to be shipped under the make-up provision, the contract term may be extended for five years or until the difference has been delivered, whichever comes first.

## II. Interventions

The ERA issued a notice of the application on August 4, 1988, inviting protests, motions to intervene, notices of intervention, and comments to be filed by September 8, 1988.<sup>3</sup> Motions to intervene in support of or without comment on the application were filed by Southern Energy Company, Consolidated Edison Company of New York, Inc., MASSPOWER, Boston Gas Company, Columbia LNG Corporation, Long Island Lighting Company, Bay State Gas Company, the Berkshire Gas Company, the Connecticut Light and Power Company, Essex County

Gas Company, Fall River Gas Company, which also filed a separate letter in support of the application, New Jersey Natural Gas Company, the Providence Gas Company, South Jersey Gas Company, the Southern Connecticut Gas Company, Valley Gas Company, Elizabethtown Gas Company, Central Hudson Gas and Electric Corporation, Connecticut Natural Gas Corporation, Statoil North America, Inc., the Brooklyn Union Gas Company, and the New York State Electric and Gas Corporation. Non-intervening letters in support of the application were filed by Boston Edison Company, Boeing Commercial Airplanes, and Senator Brock Adams. There were no filings in opposition to the application.

### III. Decision

Distrigas' application has been reviewed to determine if it conforms with Section 3 of the NGA. Under Section 3, an import must be authorized unless there has been a finding that the import "will not be consistent with the public interest." 4/ In making a Section 3 finding, the Administrator is guided by the DOE's natural gas policy guidelines.<sup>5/</sup> Under these guidelines, the competitiveness of the import arrangement in the markets served is the primary consideration for meeting the public interest test; however, under any long-term import proposal, such as this one, need for the supply and security of the supply are also important considerations.

The ERA has determined that Distrigas' proposed import arrangement, as set forth in its application to amend its current authorization, is consistent with the DOE policy guidelines. The market-responsive price and quantity provisions of Amendment No. 3 meet the competitiveness requirement of the guidelines. The new arrangement eliminates the pricing formula in the 1976 Agreement and instead uses a market-oriented approach in which Distrigas and Sonatrach share the risk of market fluctuations. The strict take-or-pay provisions of the 1976 Agreement have been replaced with a formula which commits Distrigas to take and pay for nine cargoes of LNG during the winter months, but which converts to an option to take if the reference price falls below the minimum price. Although there is a definite commitment to take and pay for a minimum amount of LNG, this formula should protect Distrigas from having to take LNG at above-market prices while, at the same time, ensuring a firm supply of LNG to DOMAC's Northeast market area during the winter-peaking season. Also, DOMAC's customers which have opposed previous requests by Distrigas to amend its authorization<sup>6/</sup> have not done so in this docket; they have either filed in support of or without comment on the application.

Distrigas has demonstrated a need for the LNG. Under the ERA's policy guidelines, need is viewed as a function of competitiveness, and imported gas shown to be competitive in the proposed market, which is the case here, gives rise to a rebuttable presumption of need. This presumption has not been questioned in this docket, but, rather, has been bolstered by the filings of various potential purchasers of the LNG who have intervened in support of the

application.

This particular import arrangement provides a reliable and secure source of supply. Distrigas averred in its application that Algeria and Sonatrach have expressed renewed commitment to the development of an American market for Algerian LNG. No party has disputed Distrigas' statement. Also, due to the new risk-sharing pricing provisions of Amendment No. 3, Algeria will have to supply the LNG in order to receive a portion of the proceeds.

Finally, the fact that no party intervened in opposition to Distrigas' application for amended authorization, and in fact several interventions and letters in support of the application were received, is strong testimony to the general support for the requested authorization. Therefore, after taking into consideration all the information in the record of this proceeding, I find that granting Distrigas authority to import LNG pursuant to its amended import arrangement with Sonatrach, as set forth in Amendment No. 3 and its application in this docket, is not inconsistent with the public interest.<sup>7/</sup>

On September 9, 1988, Distrigas filed a request for prompt approval of its requested authorization and for other relief. The other relief sought is as follows.

Distrigas currently has short-term authority to import up to five cargoes of LNG from Algeria.<sup>8/</sup> That authority will expire after the five cargoes have been imported or when the ERA approves Distrigas' long-term authorization requested in this docket, whichever comes first. Only one cargo of LNG has been imported to date. DOMAC's Federal Energy Regulatory Commission (FERC) authorization to resell the imported LNG is tied to Distrigas' short-term authorization and will expire when that authorization expires.

Distrigas and DOMAC currently have pending before the FERC an application for a certificate to enable them to sell the LNG imported pursuant to Amendment No. 3,<sup>9/</sup> but it is uncertain when the FERC will act on that application. Therefore, Distrigas requested that the ERA approve Amendment No. 3 but allow the short-term authorization to continue until the FERC approves Distrigas' and DOMAC's pending application which complements Amendment No. 3.

The ERA made Distrigas' short-term authorization expire upon approval by the ERA of the renegotiated long-term arrangement between Distrigas and Sonatrach because the short-term authorization was intended as an interim arrangement pending completion and approval of the restructured long-term agreement between the two parties. However, the ERA does not wish to create a situation where Distrigas is unable to import and sell LNG, particularly at a time of year when peak demand is high and DOMAC's customers need to make arrangements to meet that demand. Therefore, the ERA will extend Distrigas' short-term authorization until the effective date of the authorization granted

in this order, which will be on the date of the final approval and acceptance of Distrigas' and DOMAC's FERC application related to Amendment No. 3.10/

## ORDER

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

A. The authorization granted Distrigas Corporation (Distrigas) by the Economic Regulatory Administration (ERA) in ERA Docket No. 77-011-LNG, issued December 31, 1977 (1977 authorization), is hereby amended in accordance with the terms of Amendment No. 3 to the Agreement for the Sale and Purchase of Liquefied Natural Gas of April 13, 1976 (Amendment No. 3), as set forth in Distrigas' application filed in this docket. Amendment No. 3 contemplates the importation of 17 cargoes of LNG annually and extends the term of the 1976 Distrigas/Sonatrach agreement (1976 Agreement) until October 1, 2003. However, Amendment No. 3 includes make-up provisions which allow Distrigas, to the extent that it takes less than 17 cargoes of LNG during a contract year, to purchase additional quantities of LNG in succeeding year(s) until the total of such additional purchases equals the amount by which the original purchases were less than the 17 cargoes of LNG. Further, if at the end of the contract term there are still quantities of LNG remaining to be shipped under the make-up provisions, the contract term may be extended for five years (October 1, 2008) or until the difference has been delivered, whichever comes first. These make-up provisions are specifically authorized by this Order. Also, Amendment No. 3 amends, among other things, the pricing provisions, the transportation arrangement, and the strict take-or-pay provisions of the 1976 agreement.

B. The effective date of the authorization granted in Ordering Paragraph A above will be the date of final approval and acceptance of Distrigas' and Distrigas of Massachusetts' (DOMAC) pending application in Federal Energy Regulatory Commission Docket No. CP88-587.

C. The second sentence in Ordering Paragraph B of the amended import authorization granted Distrigas by the ERA in DOE/ERA Opinion and Order No. 228, ERA Docket No. 88-05-LNG, issued on March 4, 1988, and further amended by DOE/ERA Opinion and Order No. 228-A, issued on June 10, 1988, is hereby amended to read as follows: "However, this authorization will automatically terminate upon the effective date of the ERA authorization of the renegotiated long-term import arrangement between Distrigas and Sonatrach, the Algerian national energy corporation, as contemplated in the original application in this docket."

D. With respect to the LNG imports authorized by this order, Distrigas shall file with the ERA within 30 days following each calendar quarter,

quarterly reports indicating the total volume of the imports in MMcf and the purchase and sales price per MMBtu as well as the transportation price per MMBtu. The report shall also provide the details of each resale transaction, including identification of customers purchasing LNG imported pursuant to the Order Paragraph A above from DOMAC, DOMAC's sales price, and the volumes sold to each customer. The report shall also include further details of each transaction, including the estimated or actual duration of each sales arrangement(s) between DOMAC and its customers, the transporters, the markets served, and, if applicable, the per unit (MMBtu) demand/commodity charge breakdown of the price, any special contract price adjustment clauses, and any take-or-pay, ship-or-pay, or make-up provisions.

E. Within 30 days after October 1, 2003, Distrigas will file a report with the ERA indicating whether it has any contractual right to take LNG pursuant to the make-up provisions contained in Section 6.3(b) of Amendment No. 3, giving the total make-up volumes, if any, in MMcf, and estimating the additional term that will be necessary to purchase and import the make-up volumes.

F. 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 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 September 16, 1988.

--Footnotes--

1/ Unnumbered and unpublished order.

2/ The renegotiation and settlement process also included settlement of take-or-pay disputes arising from, and a short-term amendment to, the 1976 Agreement. Distrigas was authorized by the ERA to import up to five cargoes of LNG pursuant to the short-term amendment in ERA Opinion and Order No. 228, Distrigas Corporation, 1 ERA Para. 70,129 (March 4, 1988), as amended in ERA Opinion and Order No. 228-A, Distrigas Corporation, 1 ERA Para. 70,131 (June 10, 1988).

3/ 53 FR 29940, August 9, 1988.

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

5/ 49 FR 6684, February 22, 1984.

6/ See Interventions in ERA Docket Nos. 77-011-LNG, 83-013-LNG and 88-05-LNG.

7/ Because the proposed importation of LNG will use existing 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 (NEPA) (42 U.S.C. 4321, et seq.) and therefore an environmental impact statement or environmental assessment is not required. Be advised that in cases not involving new construction the DOE has issued a proposed categorical exemption to NEPA (See 53 FR 29934, August 9, 1988).

8/ See supra note 2.

9/ See Abbreviated Application for Issuance of Amended Certificates of Public Convenience and Necessity, Abandonment Authority and Approval of Certain Tariff Revisions, FERC Docket No. CP88-587.

10/ Id.