

Cited as "1 FE Para. 70,214"

Atlantic Richfield Company (ERA Docket No. 88-70-NG), February 27, 1989.

DOE/FE Opinion and Order No. 301

Conditional Order Granting Blanket Authorization to Import Natural Gas from Canada and Granting Interventions

I. Background

On November 22, 1988, Atlantic Richfield Company (ARCO) 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) and DOE Delegation Order No. 0204-111,1/ for blanket authorization to import up to 25 Bcf of Canadian natural gas per year for two years for use as fuel in its oil refinery located in Ferndale, Washington. The gas, to be purchased from various Canadian suppliers, would be transported from a point of importation at the international border near Sumas, Washington, through new pipeline facilities to be jointly constructed, owned, and operated by ARCO and Intalco Aluminum Corporation (Intalco).2/ The applicant requests import authorization for a two-year period beginning on the date that the new pipeline, referred to as the Ferndale Pipeline System, is built and operational, which is expected to be no later than November 1, 1989. ARCO proposes to file quarterly reports giving the specific terms of each import transaction.

ARCO currently receives gas acquired on the spot market in Canada which is purchased and imported on its behalf by Cascade Natural Gas Corporation (Cascade), the local distribution company, and transported through the pipeline facilities of Northwest Pipeline Corporation (Northwest) and Cascade. According to the applicant, the requested authorization would enable ARCO to secure the necessary gas supplies directly from Canadian sellers under individually-negotiated, market-responsive contracts.

ARCO filed on January 12, 1989, a gas supply agreement entered into with Petro-Canada Hydrocarbons, Inc. (PCH), dated January 6, 1989, which provides for the sale of a maximum daily volume of 6,000 Mcf on an interruptible basis at a price to be determined monthly. The agreement between ARCO and PCH is for a term ending January 1, 1990.

In support of its application, ARCO asserts that short-term spot market purchases that are voluntarily negotiated are presumed to be competitive, as determined in DOE/ERA Opinion and Order No. 251 issued to National Steel Corporation.3/ Further, ARCO states that because the gas is competitive, it is presumed to be needed. The security of supply for each purchase, according to

ARCO, is assured because of the nature of the proposed short-term transactions. The number of available suppliers removes the potential for dependence on a particular one.

ARCO and Intalco have filed a related, joint application pending with the Federal Energy Regulatory Commission (FERC), protested by Cascade and others, for authority to construct the Ferndale Pipeline System. The new pipeline would consist of a 16-inch outside diameter mainline originating at an interconnection with the pipeline facilities of Westcoast Energy Inc. (Westcoast) at the international border near Sumas, Washington, and extending 29 miles to ARCO's refinery near Ferndale, Washington. According to the applicant, the proposed pipeline would provide a significant savings over ARCO's present cost of transportation and delivery now furnished by Cascade and Northwest.

The ERA issued a notice of this application on December 5, 1988, inviting protests, motions to intervene, notices of intervention, and comments to be filed by January 9, 1989.^{4/} Motions to intervene without comment or request for additional procedures were filed by Westcoast, Pacific Gas Transmission Company, Washington Utilities and Transportation Commission, and BP Oil Company. Intalco filed a motion to intervene supporting ARCO's application. A motion to intervene filed by Cascade did not oppose ARCO's request for import authority but requested that any action taken on the application not prejudice the FERC's consideration of Cascade's protest challenging the need for the proposed new pipeline facilities. On January 24, 1989, ARCO filed an answer to the motions to intervene stating that it does not oppose them. This order grants intervention to all movants.

II. Decision

A. Section 3 Considerations

The application filed by ARCO has been evaluated to determine if the proposed import arrangement meets the public interest requirements of Section 3 of the NGA. Under Section 3, imports must be authorized unless there is a finding that they "will not be consistent with the public interest."^{5/} This determination is guided by the DOE's natural gas import policy guidelines.^{6/} Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test.

ARCO's import arrangement, as set forth in the application, is consistent with Section 3 of the NGA. We note that no party has opposed ARCO's application for import authorization. Under the import authorization requested, ARCO would be granted blanket approval, within prescribed limits, to negotiate and transact individual short-term import arrangements such as the PCH agreement submitted in this docket, without further regulatory action.

Further, like the PCH agreement, each sale would be voluntarily negotiated, short-term, and market-responsive, providing assurance that the transactions would be competitive.

This arrangement, like other, previously authorized blanket imports, is inherently competitive.^{7/} We note that all sales under the contractual agreement between PCH and ARCO would be fully interruptible giving ARCO the option of purchasing natural gas from a different supplier if it is not satisfied with the monthly price set by PCH. It is noteworthy also that under the authorization requested, each sale would be a direct sale to a single end-user, ARCO, who is a party to the transaction. There are no downstream gas customers.

Further, ARCO has demonstrated a need for the gas. Under the policy guidelines, imported gas that is shown to be competitive is presumed to be needed. This presumption is un rebutted in this proceeding. There is no dispute with respect to the security of the Canadian gas supplies. The security of supply for each purchase is assured by its short term and the number of potential suppliers.

B. Environmental Determination

The National Environmental Policy Act of 1969 (NEPA) ^{8/} requires federal agencies to give appropriate consideration to the environmental effect of their proposed actions. The issuance of several permits and authorizations are required before ARCO's proposed project can proceed. Among these permits is DOE's authorization under Section 3 of the NGA to import gas from Canada to be used by the ARCO Ferndale refinery. In addition, ARCO has requested approval of the place of entry for this import and a Presidential permit authorizing the construction, operation, maintenance, and connection of the proposed new pipeline system at the international boundary. The FERC has the lead in preparing the environmental analysis required to assess the impacts of constructing and operating the Ferndale Pipeline System. When the appropriate environmental documentation is completed by the FERC, we will independently review the analysis and take the appropriate action to complete the DOE's NEPA responsibilities. The approval of this import of natural gas is therefore being conditioned on completion of the environmental review of those facilities. At that time we will reconsider this conditional order and issue a final opinion and order.

This conditional order indicates to the parties the DOE's determination at this time on all but the environmental issue in this proceeding. However, all parties are advised that the issues addressed herein regarding the import of natural gas will be reexamined at the time of the DOE's review of the FERC NEPA analysis. The results of that reexamination will be reflected in the final opinion and order.

C. Conclusion

After taking into consideration all of the information in the record of this proceeding, I find that it is not inconsistent with the public interest to grant ARCO conditional blanket authority to import up to 25 Bcf per year of Canadian natural gas to meet the supply requirements at its Ferndale, Washington refinery for two years from the date of the first delivery when the pipeline facilities necessary to deliver the gas are constructed.

ORDER

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

A. Subject to the condition in Ordering Paragraph B, Atlantic Richfield Company (ARCO) is authorized to import up to 25 Bcf per year of natural gas from Canada to be consumed at its oil refinery located at Ferndale, Washington. This natural gas may be imported for two years beginning on the date when the proposed Ferndale Pipeline System commences service.

B. The authorization in Ordering Paragraph A is conditioned upon the issuance of a final opinion and order after review by the DOE of the environmental documentation being prepared by the Federal Energy Regulatory Commission and the completion by the DOE of its National Environmental Policy Act responsibilities in connection with the new pipeline facilities required for the transportation of the authorized volumes.

C. ARCO shall provide notice in writing of the date of initial delivery of natural gas imported under Ordering Paragraph A within two weeks after deliveries begin.

D. With respect to the imports authorized by this Order, ARCO shall file within 30 days following each calendar quarter, quarterly reports showing by month, the total volume of natural gas imports in Mcf and the average purchase price per MMBtu at the international border. The reports shall also provide the details of each transaction, including the names of the seller(s) other than Petro-Canada Hydrocarbons, Inc., duration of the agreement(s), and if applicable, the demand/commodity charge breakdown of the price, any special contract price adjustment clauses, and any take-or-pay or make-up provisions.

E. The motions to intervene, as set forth in this Opinion and Order, are hereby granted, provided that participation of such 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.

F. The authorization granted in Order Paragraph A is subject to the condition stated in Order Paragraph B, the resolution of which may result in further conditions imposed in subsequent proceedings in this case. ARCO and the intervenors in this proceeding shall be bound by any opinion and order issued in such subsequent proceedings.

Issued in Washington, D.C. February 27, 1989.

--Footnotes--

1/ On February 7, 1989, the Secretary of Energy signed Delegation Order No. 0204-127, transferring to the Assistant Secretary for Fossil Energy the authority to regulate natural gas imports and exports.

2/ Intalco filed a separate application in ERA Docket No. 88-71-NG for two-year blanket authority to import gas over the same pipeline facilities.

3/ 1 ERA Para. 70,786 (July 11, 1988).

4/ 53 FR 49772, December 9, 1988.

5/ 15 U.S.C. 717b.

6/ 49 FR 6684, February 22, 1984.

7/ See, e.g., CEPEX, Inc., 1 ERA Para. 70,673 (October 31, 1986); Victoria Gas Corporation, 1 ERA Para. 70,739 (November 30, 1987); Texas Gas Marketing, Inc., 1 ERA Para. 70,740 (December 11, 1987); Unicorp Energy, Inc., 1 ERA Para. 70,754 (January 28, 1988); Bishop Pipeline Corporation, Inc., 1 ERA Para. 70,759 (February 24, 1988); and Entrade Corporation, 1 ERA Para. 70,761 (March 3, 1988).

8/ 42 U.S.C. 4321, et seq.