

Cited as "1 FE Para. 70,249"

Transco Energy Marketing Company (FE Docket No. 89-45-NG), October 10, 1989.

DOE/FE Opinion and Order No. 338

Order Granting Conditional, and Final Interim, Long-Term and Short-Term Authority to Import Natural Gas from Canada and Granting Interventions

I. Background

On July 17, 1989, Transco Energy Marketing Company (TEMCO) filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127 for authorization to import, on behalf of three local distribution company (LDC) customers, up to 75,000 Mcf per day of Canadian natural gas over a term beginning on the date authorization is granted through October 31, 2002. TEMCO also requests blanket authorization to import volumes not purchased by the LDC customers, up to 75,000 Mcf per day during the same term, for short-term sales. The gas would be purchased in Canada by TEMCO from Esso Resources Canada, Limited (ESSO), and immediately resold in Canada to Baltimore Gas & Electric Company (BG&E), Long Island Lighting Company (LILCO), and Public Service Electric & Gas Company (PSE&G). TEMCO will arrange for transportation of the gas to the LDCs' pipeline systems in Maryland, New York and New Jersey over both existing and proposed U.S. transmission facilities.

In a supplement filed on September 25, 1989, to its application, TEMCO requests authorization to import natural gas under the LDC contracts utilizing existing pipeline facilities in the U.S. TEMCO also requests blanket authorization to import volumes not purchased by the LDC customers, up to 75,000 Mcf per day, for short-term sales.

On July 8, 1988, TEMCO entered into separately-negotiated sales contracts with BG&E and LILCO, and on July 14, 1989, with PSE&G, for the purchase of the imported gas. Under these sales agreements, the price paid to TEMCO would be established monthly and billed on the basis of a demand/commodity pricing structure. TEMCO states that the maximum demand charge for transportation under any agreement would be no greater than 30 percent of the total delivered price.

According to the application, the delivered, city-gate price paid by an LDC each month would be determined by TEMCO's weighted average sales price (WASP) of all gas sold by TEMCO in the prior month, plus the costs incurred by TEMCO for transportation of the imported gas from the Alberta wellhead.

Further, in calculating the monthly delivered price, the WASP would be reduced by an amount established in each contract to take into account the difference in transportation costs for imported gas received from Alberta and domestically produced gas received from the U.S. Gulf Coast. Adjustments to the WASP under the three contracts are 40 cents for BG&E, 36 cents for LILCO, and 43 cents for PSE&G.

TEMCO states that its WASP for June 1989 was \$1.624 per MMBtu. Using this WASP, TEMCO states that the delivered cost of gas to the LDCs in July 1989, under the maximum pricing provisions, would have been \$2.684 (U.S.) per MMBtu for LILCO, \$2.644 for BG&E, and \$2.614 for PSE&G at 100 percent load factor. These city-gate prices include the 100 percent load factor transportation rate of \$.95 for Canadian transportation and \$.47 for U.S. transportation. The U.S. transportation rate includes \$.122 for a Transcontinental Gas Pipe Line Corporation (Transco) producer settlement payment surcharge. TEMCO states that the pricing formula is subject to renegotiation if TEMCO's WASP is no longer competitive with the delivered cost of U.S. Gulf Coast gas supplies.

Each sales agreement also includes a price cap which TEMCO states is designed to ensure that the imported gas remains competitive with gas prices charged by major U.S. pipelines serving each LDC. The maximum ceiling price contained in any agreement is the 100 percent load factor sales rate for the interstate pipeline(s) serving the LDC, plus 30 cents.

According to TEMCO, no customer is required to purchase gas that exceeds 50 percent of its contract demand during the summer months and 65 percent of its contract entitlement on an annual basis. If an LDC's annual takes of gas fall below its agreed level of purchase, a deficiency charge may be assessed that is no greater than 20 percent of the average commodity sales price in effect during the annual period.

The proposed imports would enter the U.S. near Niagara Falls, New York, and would be transported on the pipeline systems of Tennessee Gas Pipeline Company (Tennessee), National Fuel Gas Supply Corporation (National), and Transco. All three pipelines are proposing to construct new facilities through which TEMCO's imports would be transported. Applications to construct these facilities and provide transportation service to TEMCO are pending before the FERC in Tennessee Docket No. CP88-171-000, National Docket No. CP88-94-000, and Transco Docket No. CP88-92-000.

The Office of Fossil Energy issued a notice of the application on July 26, 1989, inviting protests, motions to intervene, notices of intervention, and comments to be filed by September 8, 1989.¹ Motions to intervene without comment or request for additional procedures were filed by Tennessee and jointly by Washington Gas Light Company and Frederick Gas Company, Inc.

Motions to intervene in support of the application were filed by National Fuel Gas Supply Corporation, BG&E, LILCO, PSE&G, and Transco. This order grants intervention to all movants.

II. Decision

The application of TEMCO has been evaluated to determine if the proposed import arrangement meets the public interest requirements of section 3 of the NGA. Under section 3, an import must be authorized unless there is a finding that it "will not be consistent with the public interest."^{2/} The DOE is guided by its natural gas import policy guidelines,^{3/} under which the competitiveness of an import in the markets served is the primary consideration in meeting the public interest test. The DOE also considers, particularly in long-term arrangements such as this, the need for and the security of the imported supply. In addition, the DOE is required to consider the environmental effects of natural gas import authorizations.

A. General Considerations

TEMCO submits that the pricing provisions in the contracts with its three LDC customers provide assurance that the gas purchased by the customers is currently marketable and will remain marketable throughout the term of the contracts. TEMCO states that the pricing provisions of the contracts with BG&E, LILCO, and PSE&G have been negotiated to provide a source of gas that is competitively priced with other long-term gas supplies such as those from the Gulf of Mexico. TEMCO's prices are subject to adjustment based on changes in TEMCO's WASP, and to a cap based on the price of these other long-term supplies. In addition, the contract provides for market-driven renegotiation of the pricing formula.

TEMCO included, as part of its application, the supply and requirements data for each LDC customer and claims that these data show an immediate or projected need for additional firm service. TEMCO submits that the proposed import volumes are capable of meeting an important portion of the needs of the LDC companies on a timely basis, and that the pricing provisions in the contracts with these companies assure that the Canadian supplies will remain competitive with deliveries from Gulf Coast sources. On the basis of the record before the agency at this time, FE finds that the pricing provisions in the contracts with the LDC customers provide assurance that they will remain competitive during the term of the contracts and that there is a need for the gas.

TEMCO states that its affiliate, Transco, has imported reliable quantities of gas from Sulpetro Limited (Sulpetro) since 1980 and that ESSO, present owner of Sulpetro's gas reserves, can only strengthen the security and reliability of these supplies. TEMCO claims that ESSO's purchase of Sulpetro

and also Sulbath Exploration, for approximately \$715 million, increased ESSO's proven reserves by one third. TEMCO also states that Esso's acquisition of Ocelot Industries Ltd. further increased its reserves by an additional 20 percent. TEMCO submits that ESSO has adequate reserves and production capability to provide a secure and reliable long-term supply of natural gas to TEMCO and, in turn, to TEMCO's LDC customers. FE finds that the supply of gas will remain secure and reliable during the term of the contracts.

TEMCO also requests blanket import authority for a term concurrent with the requested long-term authorization. While the DOE finds blanket import (and export) authority, and the short-term, market-responsive transactions this authority is intended to facilitate, to be inherently competitive, we limit the term of this authority to two years. The two-year limit protects the public from potential long-term, adverse consequences of contractual provisions that are not known and therefore are not scrutinized by the DOE at the time of authorization. Accordingly, FE intends to limit TEMCO's requested blanket authorization to a two-year term beginning on the date of first delivery.

B. Environmental Determination

The National Environmental Policy Act of 1969 ^{4/} (NEPA) requires the DOE to give appropriate consideration to the environmental effect of its proposed actions. TEMCO's import proposal requires issuance of several major permits and authorizations before the project can proceed, including FE's import authorization under section 3 of the NGA and FERC's authorization under section 7 of the NGA for three pipeline systems to construct and operate new facilities to transport the natural gas.^{5/} The FERC has the lead in preparing the environmental analysis required to assess the impacts of the new facilities related to this import project.

When the appropriate environmental documentation is completed by the FERC, the DOE 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 to the extent the project contemplates using the proposed new facilities is therefore conditioned on completion of an environmental review and DOE's responsibilities under NEPA. Similarly, to the extent this order is conditional, the findings are preliminary and indicate to the parties the FE's determination at this time on all but the environmental issues in this proceeding. All parties are advised that the issues addressed herein regarding the import of natural gas using the proposed new facilities will be reexamined at the time of the DOE's review of the FERC's NEPA analysis. The results of that reexamination will be reflected in the final opinion and order.

C. Conclusion

After taking into consideration all the information in the record of this proceeding, I find that granting TEMCO conditional authority to import up to 75,000 Mcf per day of Canadian natural gas through a term ending October 31, 2002, in accordance with the three LDC contracts described above, is not inconsistent with the public interest. I also find that granting TEMCO conditional blanket authority to import volumes not purchased by the LDC customers, up to 75,000 Mcf per day, over a two-year period beginning on the date of first delivery is not inconsistent with the public interest.

In addition, I find that granting TEMCO final, interim authority to import this gas utilizing existing facilities, until such time as the DOE issues a final order authorizing the import utilizing the proposed new facilities, is not inconsistent with the public interest. As discussed above, blanket authority is limited to two years.

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 C, Transco Energy Marketing Company (TEMCO) is authorized to import, utilizing proposed new facilities, up to 75,000 Mcf per day of Canadian natural gas during a term beginning on the date authorization is granted and ending October 31, 2002, on behalf of three local distribution company (LDC) customers, Baltimore Gas & Electric Company, Long Island Lighting Company and Public Service Electric & Gas Company, in accordance with its application filed in this docket.

B. Subject to the condition in Ordering Paragraph C, TEMCO is granted blanket authorization to import, utilizing proposed new facilities, up to the 75,000 Mcf per day of natural gas authorized by Ordering Paragraph A but not purchased under the LDC contracts for a two-year term beginning on the date of first delivery.

C. The authorizations in Ordering Paragraphs A and B are conditioned upon entry of a final opinion and order after review by the Department of Energy (DOE) of the environmental documentation being prepared by the Federal Energy Regulatory Commission (FERC) and the completion by the DOE of its National Environmental Policy Act responsibilities.

D. TEMCO is authorized to import through existing facilities up to 75,000 Mcf per day of natural gas, on behalf of the LDC customers, until such time as the condition in Ordering Paragraph C is satisfied, or October 31, 2002, whichever occurs first.

E. TEMCO is also granted blanket authorization to import through

existing facilities up to 75,000 Mcf per day of natural gas authorized by Ordering Paragraph D but not purchased by the LDC customers for a two-year term beginning on the date of first delivery or until the condition in Ordering Paragraph C is satisfied, whichever occurs first.

F. TEMCO shall notify the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in writing of the date of initial delivery of natural gas imported under Ordering Paragraphs A and D, and of the date of initial delivery of natural gas imported under Ordering Paragraphs B and E herein, within two weeks after deliveries begin.

G. With respect to the imports authorized by this Opinion and Order, TEMCO shall file with the Office of Fuels Programs within 30 days following each calendar quarter, quarterly reports showing, by month, and by contract, the total volume of natural gas imports in Mcf and the average purchase price per MMBtu at the international border. The monthly pricing information shall include a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis.

H. With respect to the imports authorized in Ordering Paragraphs B and E, the reports shall also provide the details of each import transaction, including the name of the seller and purchaser, estimated or actual duration of the agreement(s), transporter(s), point of entry, 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 or make-up provisions.

I. 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.

J. The authorizations granted in Ordering Paragraphs A and B are subject to the condition stated in Ordering Paragraph C, the resolution of which may result in further conditions imposed in subsequent proceedings in this case. TEMCO and intervenors in this proceeding shall be bound by any Opinion and Order issued in such subsequent proceedings.

Issued in Washington, D.C., on October 10, 1989.

--Footnotes--

1/ 54 FR 32692, August 9, 1989.

2/ 15 U.S.C. Sec. 717b.

3/ 49 FR 6684, February 22, 1984.

4/ 42 U.S.C. 4321, et seq.

5/ With respect to TEMCO's modified request to import natural gas on an interim basis through existing facilities, the DOE has determined that compliance with NEPA can be accomplished by means of categorical exclusion. On March 27, 1989, the DOE published in the Federal Register (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in this case presumes that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.