

Cited as "1 FE Para. 70,335"

Louis Dreyfus Energy Corp. (FE Docket Nos. 89-83-LNG, 89-84-NG), July 13, 1990.

DOE/FE Opinion and Order No. 409

Order Granting Blanket Authorization to Import Natural Gas Including Liquefied Natural Gas and Granting Intervention

I. Background

On November 30, 1989, Louis Dreyfus Energy Corp. (L.D. Energy) filed two applications with 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 blanket authorizations to import up to a total of 50 Bcf of natural gas from Canada over a two-year period beginning on the date of first delivery and up to 250 Bcf of liquefied natural gas (LNG) from overseas producers and suppliers over a five-year period beginning on the date of first delivery. L.D. Energy proposed to import LNG for individual contract terms of greater than two years only after requesting specific separate authorization from the DOE. L.D. Energy stated it would use existing pipeline and LNG facilities for the processing and transportation of requested import volumes and would submit quarterly reports detailing each transaction.

L.D. Energy, a Delaware corporation with its principal place of business in Wilton, Connecticut, is a wholly-owned subsidiary of Louis Dreyfus Corporation, a New York corporation engaged in the international and domestic merchandising of energy, cotton, sugar, textiles, meat, livestock and government securities, and also develops and manages real estate investments in the U.S. and Canada. Under the blanket authorizations sought, L.D. Energy contemplates becoming active in the trading and marketing of natural gas and LNG procured from both domestic and foreign sources.

In support of its application, L.D. Energy asserted that the natural gas and LNG would be imported at prices that would be competitive with domestic gas supplies available to L.D. Energy. The prices of the natural gas and LNG would be determined by market conditions which, in turn, would be influenced by the price and availability of competing fuels, including domestic natural gas supplies. L.D. Energy stated that, because its supply arrangements would be based on prevailing market pricing and gas supply conditions, any natural gas and LNG it imports would be needed and the price of such gas would be competitive.

A notice of the application was issued on February 1, 1990, inviting protests, motions to intervene, notices of intervention, and comments to be filed by March 9, 1990. 1/ A motion to intervene without comment or request for additional procedures was filed by Distrigas Corporation. This order grants intervention to this movant.

II. Discussion

The applications filed by L.D. Energy have been evaluated to determine if the proposed import authorizations meet 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/ This determination 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.

L.D. Energy's uncontested proposals to import natural gas and LNG, as set forth in its applications, are consistent with section 3 of the NGA and the DOE's international gas trade policy. The DOE believes that L.D. Energy's market-based approach for negotiating short-term sales of imports will enhance competition in gas markets. Under L.D. Energy's proposed arrangements, which contemplate individual, short-term sales voluntarily negotiated in response to the marketplace, transactions would only occur to the extent that producers and sellers can provide spot or short-term volumes, the customers need such import volumes, and the prices remain competitive. Thus, each transaction must reflect the true value of the commodity being traded, or no gas sales would take place. This opinion reflects DOE's continuing belief that the short-term transactions proposed by L.D. Energy, like the many blanket arrangements already approved by this Department,^{4/} can be evaluated and found to be in the public interest without knowing in advance the precise terms of each sale.

However, the DOE policy regarding blanket import authorizations is that an import authorization holder can have only one blanket authorization at a time, since any transaction that can be conducted under one blanket authorization can be conducted under another if the applicant has structured its request broadly enough. For this reason, the DOE will consolidate L.D. Energy's applications and issue a single blanket authorization beginning on the date of first delivery of either natural gas or LNG.

In addition, with respect to the proposed LNG imports, L.D. Energy requested a five-year term with the condition that it would import LNG for individual contract terms of greater than two years only pursuant to specific

authorization from the FE. In support of this request, L.D. Energy cited DOE Order No. 289, Pan National Gas Sales, Inc. (Pan National).^{5/}

The DOE has routinely granted authorizations to import natural gas and LNG for sale under to-be-negotiated terms that will reflect market conditions.^{6/} Because such sales will occur only if the gas is marketable, competitively-priced and needed, import arrangements that facilitate such transactions are presumptively in the public interest. However, to ensure that blanket import authorizations are sufficiently flexible to respond to changes in market conditions, such authorizations have been limited to two-year periods. L.D. Energy has not demonstrated why the DOE should not limit this blanket authorization to two years. In the Pan National proceeding, Pan National had a 20-year LNG purchase contract with its Algerian supplier, no such supply contract exists in this case.

After taking into consideration all of the information in the record of this proceeding, I find that granting L.D. Energy blanket authority to import up to a total of 50 Bcf of natural gas from Canada and up to 250 Bcf of LNG from overseas producers and suppliers over a two-year term beginning on the date of first delivery of natural gas or LNG is not inconsistent with the public interest. ^{7/}

ORDER

For the reasons set forth above, under section 3 of the Natural Gas Act, it is ordered that:

A. Louis Dreyfus Energy Corp. (L.D. Energy) is authorized to import up to a total of 50 Bcf of natural gas from Canada and up to 250 Bcf of liquefied natural gas (LNG) from overseas producers and suppliers over a two-year term beginning on the date of the first import of natural gas or LNG.

B. This natural gas or LNG may be imported at any point on the international border where existing pipeline or LNG facilities are located.

C. Within two weeks after deliveries begin, L.D. Energy shall notify the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in writing of the date that the first import authorized in Ordering Paragraph A above occurs.

D. With respect to the imports authorized by this Order, L.D. Energy shall file with the Office of Fuels Programs, within 30 days following each calendar quarter, quarterly reports indicating whether sales of imported

natural gas or LNG have been made, and if so, giving, by month, the total volume of the imports in Mcf and the average price for the imports per MMBtu at the international border. The reports shall also provide the details of each import transaction, including whether the import was natural gas or LNG, the country of origin of imports, the names of the seller(s), and the purchaser(s), including those other than L.D. Energy, estimated or actual duration of the agreement(s), transporter(s), including any LNG tankers used, points of entry, market(s) 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 or make-up provisions.

E. The motion to intervene, filed by Distrigas Corporation as set forth in this Opinion and Order, is hereby granted, 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 they might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., on July 13, 1990.

--Footnotes--

1/ 55 FR 4227, February 7, 1990.

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

3/ 49 FR 6684, February 22, 1984.

4/ See, e.g., POCO Petroleum, Inc., Order No. 372, 1 FE Para. 70,290 (January 19, 1990); Westar Marketing Company, Order No. 394, 1 FE Para. 70,292 (January 25, 1990); Dome Petroleum Corp., Order No. 379, 1 FE Para. 70,297 (February 6, 1990); Chevron Natural Gas Services, Inc., Order No. 380, 1 FE Para. 70,298 (February 6, 1990); and Mobil Natural Gas Inc., Order 385, 1 FE Para. 70,305 (February 16, 1990).

5/ 1 ERA Para. 70,133, December 23, 1988.

6/ See supra note 4.

7/ Because the proposed importation/exportation of gas 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 (42

U.S.C. 4321, et seq.) and therefore an environmental impact statement or environmental assessment is not required. See 40 CFR Sec. 1508.4 and 54 FR 12474 (March 27, 1989).