

Cited as "1 FE Para. 70,308"

Transcontinental Gas Pipe Line Corporation (ERA Docket Nos. 81-30-NG, 84-06-NG), March 28, 1990.

DOE/FE Opinion and Order No. 46-B

Order Vacating Authorization to Import Natural Gas from Canada

I. Background

On January 18, 1989, the Department of Energy (DOE) ordered Transcontinental Gas Pipe Line Corporation (Transco) to show cause why its authorization to import Canadian natural gas should not be revoked. The importation of this gas from Sulpetro Limited (Sulpetro), a Canadian producer, was approved by the Economic Regulatory Administration (ERA) in DOE/ERA Opinion and Order No. 46, issued September 16, 1982,^{1/} as amended by DOE/ERA Opinion and Order No. 46-A, issued October 31, 1984.^{2/} The show cause order centered on Transco's assignment of gas purchase rights under its supply contract with Sulpetro to Transco Energy Marketing Company (TEMCO). TEMCO is a marketing affiliate of Transco.

The Sulpetro contract was the sole contract supporting the imports authorized by Orders 46 and 46-A. Transco had been purchasing gas from Sulpetro since 1980, but on February 3, 1987, assigned to TEMCO its rights and obligations under the contract with Sulpetro, whose assets were subsequently acquired by Esso Resources Canada, Limited (Esso). As successor to the Transco-Sulpetro contract, TEMCO began importing gas from Esso on February 3, 1987, pursuant to its two-year blanket import authorization issued January 27, 1986, in DOE/ERA Opinion and Order No. 104 (Order 104),^{3/} which was extended by DOE/ERA Opinion and Order No. 278 (Order 278) until 1991.^{4/} Transco has imported no gas under that contract since August 1987.

The DOE became aware of the assignment when TEMCO applied for separate long-term authority to import gas to be purchased from Esso under the assigned contract on behalf of three local distribution company (LDC) customers: Baltimore Gas and Electric Company (BG&E), Long Island Lighting Company (LILCO), and Public Service Electric & Gas Company (PSE&G).^{5/} The DOE concluded that the assignment of the contract by Transco to TEMCO effectively nullified the authorization granted in Orders 46 and 46-A because Transco's authorization had been approved on the basis of a supply arrangement that no longer existed. The DOE therefore issued its show cause order proposing to revoke this authorization. Transco was given until February 21, 1989, to file

a written reply.

On February 21, 1989, Transco filed an answer to the show cause order. In its answer, the company opposed rescission of the authorization, contending that: (1) the assignment did not result in a change in the terms or conditions of the underlying contract; (2) the assignment was contingent upon TEMCO securing the necessary regulatory approvals, then pending, to implement its long-term import arrangement on behalf of its LDC purchasers; and (3) Transco has the right to purchase any gas that is not taken by TEMCO. However, Transco stated that if the authorization requested by TEMCO to supply the LDCs was granted by DOE, revocation would be appropriate.

II. Decision

Orders 46 and 46-A authorized Transco to import gas on a firm basis through October 31, 1994, based on a contract entered into by Transco with Sulpetro. TEMCO subsequently was assigned the Sulpetro contract by Transco,^{6/} the supplies were released to TEMCO, and TEMCO has been importing the gas dedicated to the contract under its blanket authority.^{7/} As it now stands, TEMCO, rather than Transco, is purchasing the gas from Esso as an agent on behalf of individual Transco customers and reselling the gas to these customers. Transco no longer has a long-term, non-interruptible gas supply committed by contract; any future imports by Transco under the contract would be limited to gas not taken by TEMCO.^{8/} In sum, the assignment of the Sulpetro/Esso contract to TEMCO leaves Transco's long-term authorization a shell no longer supported by a supply contract.

After considering all relevant factors, I find that the assignment invalidates Orders 46 and 46-A and Transco's authorization to import Canadian natural gas should be vacated. This action will not affect the amount of gas available to Transco's customers or prejudice Transco's ability to seek new long-term authority should circumstances change.

ORDER

Pursuant to section 3 of the Natural Gas Act, it is hereby ordered that:

The authorization granted to Transcontinental Gas Pipe Line Corporation, to import natural gas from Canada pursuant to DOE/ERA Opinion and Order No. 46 in ERA Docket No. 81-30-NG, issued September 16, 1982, as amended by DOE/ERA Opinion and Order No. 46-A in ERA Docket No. 84-06-NG, issued October 31, 1984, is hereby vacated, effective on the date of issuance of this order.

Issued in Washington, D.C., on March 28, 1990.

--Footnotes--

1/ 1 ERA Para. 70,540.

2/ 1 ERA Para. 70,573. Pursuant to Order 46-A, the term of Transco's authorization to import this gas at Niagara Falls, New York was extended by three years to October 31, 1994, the maximum daily quantity was increased to 125,000 Mcf, and the pricing structure was revised to incorporate a two-part rate.

3/ 1 ERA Para. 70,622.

4/ 1 ERA Para. 70,820 (November 4, 1988).

5/ This import application was filed in ERA Docket No. 88-40-NG on July 12, 1988. It was replaced by TEMCO's application filed in Fossil Energy Docket No. 89-45-NG on July 17, 1989, to import the same volumes for the same three LDC customers. The earlier application was withdrawn on May 15, 1989, due to the DOE's refusal to grant confidential treatment sought by the parties for certain pricing information contained in the underlying gas purchase agreements.

6/ Transco, as a result of settlement negotiations regarding a number of purchased gas adjustment (PGA) rate proceedings before the Federal Energy Regulatory Commission (FERC), removed the Sulpetro supplies from its supply portfolio. See Stipulation and Agreement filed March 31, 1987, which was approved by FERC order issued May 18, 1987 (39 FERC Para. 61,170).

7/ Transco argues that the assignment did not alter the terms and conditions of the supply contract. Even if true, this does not mean that the assignment did not alter the basis for authorization. Furthermore, following the assignment, TEMCO renegotiated with Sulpetro certain contractual terms and conditions pertaining to the supply arrangement. Transco was a signatory party. The amending agreement dated October 21, 1987, (1) replaced TEMCO for Transco as buyer of the gas under the sales contract, (2) revised the pricing formula for gas to be sold, and (3) increased the take-or-pay liability from 70 to 75 percent. It is also noted, contrary to the contention of Transco, that the assignment and these later changes were substantial modifications affecting the supply arrangement and precisely the sort of changes reportable under 10 CFR Sec. 590.407.

8/ On October 10, 1989, the DOE granted TEMCO conditional and final interim authorization to import from Esso on a firm basis up to 75,000 Mcf per day of Canadian gas at Niagara Falls through October 31, 2002, for resale to BG&E, LILCO, and PSG&E. See DOE/FE Opinion and Order No. 338 (1 FE Para. 70,249). The authorization is conditioned upon completion of the necessary environmental analysis in connection with the construction of proposed new pipeline facilities. Until such time as the condition is satisfied, TEMCO may import this gas by means of existing facilities.