

Cited as "1 FE Para. 70,402"

Transco Energy Marketing Company (FE Docket No. 89-45-NG), January 31, 1991.

DOE/FE Opinion and Order No. 338-A

Opinion and Order Granting Final Long-Term and Short-Term Authorization to Import Natural Gas from Canada

## I. Background

On October 10, 1989, the Office of Fossil Energy (FE) of the Department of Energy (DOE), issued DOE/FE Opinion and Order No. 338 (Order 338) 1/ granting Transco Energy Marketing Company (TEMCO) conditional and final interim, long-term and short-term authority to import up to 75,000 Mcf per day of Canadian natural gas. The gas would be purchased in Canada by TEMCO from Esso Resources Canada, Limited (ESSO), and immediately resold in Canada to three local distribution company (LDC) customers, Baltimore Gas & Electric Company (BG&E), Long Island Lighting Company (LILCO), and Public Service Electric & Gas Company (PSE&G). TEMCO was granted final interim authority by Order 338 as long as the gas was imported utilizing existing pipeline facilities. Firm, long-term transportation of these gas volumes, however, required construction of new pipeline facilities (referred to as the TEMCO Project) and, to the extent TEMCO proposed to use these new facilities, Order 338 conditioned import authority upon the entry of a final opinion and order after completion by DOE of its responsibilities under the National Environmental Policy Act of 1969 (NEPA).2/

Under TEMCO's proposal, Canadian gas would be purchased by TEMCO at or near the international boundary from Esso Resources Canada, Limited, and immediately resold to BG&E, LILCO, and PSE&G. The TEMCO Project facilities would be used principally to provide firm transportation service sought by these LDC customers who, because of constraints in U.S. pipeline capacity, have been receiving imported gas on an interruptible basis.

The TEMCO Project involves applications filed with the Federal Energy Regulatory Commission (FERC) by Tennessee Gas Pipeline Company (Tennessee), Transcontinental Gas Pipe Line Corporation (Transco), and National Fuel Gas Supply Corporation/Penn-York Energy Corporation (National Fuel) to construct facilities and transport natural gas delivered at the Niagara Import Point (NIP) in Niagara, New York, to downstream users in the U.S. Northeast. These facilities are among various projects proposing service to the U.S. through NIP in FERC's "open season" proceedings and specifically were affirmed by FERC on January 12, 1989, as part of the Niagara Settlement. The Niagara Settlement divided proposed facilities into three independent project phases based largely on the availability of Canadian gas and firm downstream commitments. The TEMCO Project constitutes the second phase of the Niagara Settlement. The necessary facilities consist of approximately 77.3 miles of transmission pipeline loop; 0.28 mile of replacement pipeline; 15,100 horsepower of additional compression at four existing compressor stations; and the addition and modification of six measurement facilities. In general, these facilities would be adjacent to or on existing pipeline right-of-way.

NEPA requires that DOE give appropriate consideration to the environmental effects of gas import authorizations. At the time Order 338 was issued, the environmental analysis of the proposed TEMCO Project facilities

had not been completed. The authorizations granted by Order 338 were conditioned upon entry of a final opinion and order after review by DOE of the environmental documentation being prepared by FERC.<sup>3/</sup> This analysis is now complete.

## II. Decision

Under section 3 of the Natural Gas Act (NGA) an arrangement to import natural gas must be approved unless it is found that the import "will not be consistent with the public interest." <sup>4/</sup> FE is guided in making its determination by DOE's natural gas import policy guidelines.<sup>5/</sup> Under this policy, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test. In addition, NEPA requires DOE to consider the environmental effects of natural gas import arrangements.

### A. Environmental Considerations.

FERC was the lead agency in conducting an examination of the environmental effects of constructing the TEMCO Project facilities. Subsequent to the issuance of Order 338, FERC completed an environmental assessment (EA) of these facilities.<sup>6/</sup> The FERC EA concluded the TEMCO Project would not be a major Federal action significantly affecting the quality of the human environment, if the construction was completed in accordance with FERC recommendations set forth in the EA and the FERC order approving the TEMCO Project facilities.<sup>7/</sup> DOE, after reviewing the environmental material prepared by FERC, adopted the EA as DOE/EA-0484 in partial satisfaction of its responsibilities under NEPA. DOE also conducted its own independent environmental analysis and concluded that the TEMCO Project facilities would not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and that no environmental impact statement or additional EA is required.<sup>8/</sup>

### B. Order No. 338.

Order 338 operates as a final opinion and order granting TEMCO authority to import gas over existing facilities. Findings made in Order 338 as they pertain to imports involving the proposed TEMCO Project facilities were preliminary and are being reexamined here in light of our review of the environmental analyses.

In Order 338, DOE found that gas imported over the new facilities would not be inconsistent with the public interest, subject to satisfying the NEPA requirements. DOE concluded the competitiveness of the imported gas over the term of the import proposal would be assured by pricing mechanisms in the separately-negotiated sales contracts with BG&E, LILCO, and PSE&G. Under these provisions, TEMCO's prices are subject to adjustment based on changes in TEMCO's weighted average cost of gas, which includes long-term gas supplies from the Gulf Coast, and to a cap based on the price of these other long-term supplies. In addition, DOE noted the contracts provide for market-driven renegotiation. DOE found that need for the gas had been shown based on the LDC's immediate or projected need for additional firm service. Finally, DOE found the supply of gas would remain secure and reliable during the term of the contracts.

### C. Conclusion.

TEMCO's proposal to import Canadian gas using the new TEMCO Project

facilities is the same in all relevant respects as it was when conditionally approved in Order 338. Approval was conditioned upon the entry of a final opinion and order after review of the environmental analyses of the new facilities necessary to transport the gas to TEMCO's LDC customers. After examining the entire record of this proceeding, including the EA prepared by the FERC, I find there is no information in the record that would provide a basis for altering the finding in Order 338 that the long-term import proposed by TEMCO is not inconsistent with the public interest. Accordingly, this final opinion and order removes the condition imposed by Ordering Paragraph C of Order 338 and grants TEMCO authority to import, utilizing the new facilities, (1) up to 75,000 Mcf per day of Canadian natural gas during a term beginning on the effective date of this order and ending October 31, 2002, on behalf of BG&E, LILCO, and PSE&G, in accordance with the application filed in this docket, and (2) up to the 75,000 Mcf per day not purchased under the LDC contracts on a two-year, blanket basis, beginning on the date of first delivery.

#### ORDER

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

A. Transco Energy Marketing Company (TEMCO) is authorized to import, utilizing the new TEMCO Project facilities, up to 75,000 Mcf per day of Canadian natural gas during a term beginning on the date this authorization is issued 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 contracts and application, as described in this opinion and order and in Opinion and Order No. 338.

B. TEMCO is granted blanket authorization to import, utilizing the new facilities, up to 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. 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 B within two weeks after deliveries begin.

D. With respect to the imports authorized by Paragraph A of 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.

E. With respect to the imports authorized in Ordering Paragraph B, the quarterly report shall indicate whether imports of natural gas have been made, and if so, giving, by month, the total volume of the imports in Mcf and the average price for imports per MMBtu at the international border. 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.

Issued in Washington, D.C., on January 31, 1991.

--Footnotes--

1/ 1 FE Para. 70,249.

2/ 42 U.S.C. 4321, et seq.

3/ Under the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127, FERC has the authority to approve or disapprove the site, construction and operation of interstate pipeline facilities, and must perform an environmental review before making its decision.

4/ 15 U.S.C. Para. 717b.

5/ 49 FR 6684, February 22, 1984.

6/ The FERC EA on the TEMCO Project is dated January 1990. In orders issued to Tennessee Gas Pipeline, et al. on May 2, and July 20, 1990, 51 FERC Para. 61,113; rehearing granted in part, 52 FERC 61,069, the Commission approved the EA and certificated the construction and operation of the TEMCO Project facilities. The May 2 order specifically conditioned authorization upon compliance with conditions recommended by the EA. See pages 61,279--61,281 of the FERC Order. The July 20 order granted minor modifications and a clarification sought by Tennessee and Transco on rehearing.

7/ Id.

8/ See the Finding of No Significant Impact issued by DOE on January 25, 1991, and filed in this docket.