

SANDRA E. RIZZO
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February 3, 2004

Sally Kornfeld, Acting Team Leader
Office of Natural Gas and Petroleum Import
And Export Activities
Fossil Energy
U.S. Department of Energy
Forrestal Building, Room 3E-033
1000 Independence Ave., S.W.
Washington, D.C. 20585

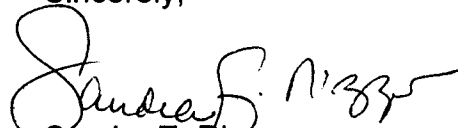
Re: EPCOR Merchant and Capital (US) Inc., FE Docket No. 04-09-NG
Application for Authorization to Import Natural Gas From Canada
and to Export Natural Gas to Canada

Dear Ms. Kornfeld:

Please find enclosed an original and fifteen (15) copies of the application of EPCOR Merchant and Capital (US) Inc. for blanket authorization, under Section 3 of the Natural Gas Act, to import natural gas from Canada to the United States and to export natural gas to Canada from the United States. An extra copy is enclosed to be date-stamped and returned with the waiting messenger.

A check made out to the United States Treasury in the amount of \$50.00 is provided herewith. If you should have any questions regarding this filing, please contact the undersigned.

Sincerely,


Sandra E. Rizzo

SER/fabbel

Enclosures

UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

EPCOR MERCHANT AND CAPITAL (US) INC.)
) FE Docket No. 04-⁰⁹___-NG
)

APPLICATION OF EPCOR MERCHANT CAPITAL (US) INC.
FOR BLANKET AUTHORIZATION TO IMPORT NATURAL GAS FROM CANADA
AND TO EXPORT NATURAL GAS TO CANADA

Pursuant to Section 3 of the Natural Gas Act ("NGA") and Section 201 of the Energy Policy Act of 1992 ("EPAct"), 15 U.S.C. § 717b, and Part 590 of the Rules and Regulations of the Department of Energy ("DOE"), Office of Fossil Energy ("FE") (collectively "DOE/FE"), EPCOR Merchant and Capital (US) Inc. ("EMC") hereby submits the instant application for blanket authorization to import natural gas from Canada to the United States and to export natural gas from the United States to Canada (the "Application"). In support of this Application, EMC submits the following information as required by 10 C.F.R. § 590.202.

I. GENERAL

All correspondence and communications regarding this Application should be addressed to the following individuals:

Riaz Jessa
Transaction Accounting Assistant
EPCOR Merchant and Capital (US) Inc.
EPCOR Place
8th Floor, 505 - 2nd Street S.W.
Calgary, Alberta T2P 1N8
CANADA
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Fax: (403) 717-4601
rjessa@epcor.ca

Sandra E. Rizzo, Esq.
Preston Gates Ellis
& Rouvelas Meeds, LLP
1735 New York Avenue, NW, Suite 500
Washington, DC 20006
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Fax: (202) 331-1024
sandrarr@prestongates.com

II. BACKGROUND

EMC is a Delaware corporation with its principal place of business at 505 – 2nd Street S.W., 8th Floor, Calgary, Alberta, Canada, T2P 1N8. EMC is an indirect, wholly owned subsidiary of EPCOR Utilities Inc. of Edmonton, Alberta, Canada. EPCOR Utilities Inc., through various subsidiary corporations, owns and operates power plants, electrical transmission and distribution networks, builds and operates water and wastewater treatment facilities, and provides power, water and natural gas to its expanding customer base. EPCOR Utilities Inc. currently has approximately \$4.5 billion in assets and a customer base of over 600,000 in operations throughout Alberta, British Columbia, Ontario and the United States Pacific Northwest.

III. AUTHORIZATION REQUESTED

EMC requests that the DOE/FE authorize EMC, as requested herein, to import natural gas from Canada to the United States and to export natural gas to Canada from the United States for a two-year period. EMC was initially issued blanket authorization by the DOE/FE in Order No. 1754 to import natural gas from Canada to the United States and to export natural gas from the United States to Canada for a two-year term beginning on January 25, 2002.

Due to an inadvertent administrative oversight, EMC failed to file this Application prior to the expiration of its original authorization on January 24, 2004. EMC filed this Application promptly after becoming aware of the lapse. In order to rectify this oversight, EMC respectfully asks that the DOE/FE order on this Application become effective as of January 24, 2004, or alternatively requests any waivers necessary to permit its natural gas import and export activity during this interim period.

EMC specifically requests authority to import up to 22 billion cubic feet (“Bcf”) of natural gas from Canada and to export up to 33 Bcf of natural gas to Canada for a two-year term beginning on the date of the order granting this application. The requested authorization will enable EMC to participate in short-term or spot-market natural gas transactions with customers in the United States. The contract provisions for participation in these short-term or spot-market gas transactions will be competitive and responsive to prevailing market conditions. Since a transaction arranged by EMC may be structured with EMC either purchasing and taking title to the gas, or acting as agent for Canadian and United States buyers and sellers, EMC requests authorization to import and export gas for its own account as well as for the account of its suppliers and purchasers in Canada and the United States.

EMC’s negotiations with prospective natural gas purchase and sale counterparties in the United States and Canada are of a continuing nature. Therefore, EMC requests that such import and export authority be granted on a blanket basis at all existing points of import and export from and to Canada to provide EMC with the flexibility necessary to respond quickly to available marketing opportunities. EMC cannot be competitive with other sellers if it must apply for import and export authorization for each transaction. The subject Application is similar to other blanket import and export arrangements approved by DOE.

IV. PUBLIC INTEREST

Section 3 of the NGA, as amended by the EPAct, requires that each application for authorization to import and/or export natural gas be evaluated to determine if the

proposed arrangement meets the public interest.¹ Section 3(c) provides that importing and exporting natural gas from or to a nation with which a free trade agreement is effective shall be deemed to be within the public interest, and that applications to so import and export shall be granted without modification or delay.² Because the United States and Canada have a free trade agreement in effect, EMC's Application for authority to import natural gas from Canada to the United States and to export natural gas from the United States to Canada meets the section 3(c) criteria, and therefore, EMC submits it is consistent with the public interest.

V. ENVIRONMENTAL IMPACT

EMC proposes to import and export the subject gas through existing pipeline facilities at the international border between the United States and Canada. EMC does not propose the construction of any new facilities to import and export natural gas. As a result, granting this application will not be a 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.* For this reason, an environmental impact statement or environmental assessment will not be required.

VI. REPORTING REQUIREMENTS

With respect to all imports and exports made pursuant to the authorization requested herein, EMC will file with the DOE/FE, within thirty days following the close of each calendar quarter, reports indicating by month whether imports or exports have

¹ 15 U.S.C. § 717b(a) (2000).

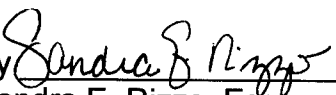
² 15 U.S.C. § 717b(c).

occurred. If no imports or exports have been made in a given month, EMC will file a report of "no activity" for that month. If imports and/or exports have occurred, EMC will report the following information: (1) total monthly volumes in Mcf; (2) the average monthly purchase price of gas per MMBtu at the international border; (3) the name of the seller; (4) the name of the purchaser; (5) the estimated or actual duration of the agreements; (6) the name of the U.S. transporter(s); (7) the point of entry or point of exit; and (8) the geographic markets served. The reports will also include the following information specific to import transactions: (1) whether the sales are made on an interruptible or firm basis, and, if applicable, and (2) the per unit (MMBtu) demand/commodity/reservation charge breakdown of the contract price.

VII. CONCLUSION

For the reasons set forth above, EMC respectfully requests that the DOE/FE expeditiously consider the instant application and, pursuant to section 3 of the NGA and section 201 of the Energy Policy Act, grant its request for blanket import and export authorization effective as of January 24, 2004. EMC submits that a grant of such authorization would be consistent with the public interest.

Respectfully submitted,

By 
Sandra E. Rizzo, Esq.
Preston Gates Ellis
& Rouvelas Meeds LLP
1735 New York Avenue, NW, Suite 500
Washington, DC 20006

Dated: February 3, 2004

Attorney for EPCOR Merchant and Capital (US) Inc.

February 3, 2004

Sally Kornfeld, Acting Team Leader
Office of Natural Gas and Petroleum
Import And Export Activities
Fossil Energy
U.S. Department of Energy
Forrestal Building, Room 3E-033
1000 Independence Ave., S.W.
Washington, D.C. 20585

Re: Application of EPCOR Merchant and Capital (US) Inc. for Authorization to
Import Natural Gas to the United States from Canada and To Export
Natural Gas to Canada From the United States

Statement and Opinion of Counsel

Dear Ms. Kornfeld:

Pursuant to 10 C.F.R. Section 590.202(c), this Statement and Opinion of Counsel is hereby furnished in connection with the Application of EPCOR Merchant and Capital (US) Inc., or the "Company," for blanket short-term authority to import natural gas from Canada to the United States and to export natural gas to Canada from the United States in accordance with Section 3 of the Natural Gas Act. The Application, being filed today contemporaneously with this Statement and Opinion of Counsel, seeks a renewal of EPCOR Merchant and Capital (US) Inc.'s authority to import and export gas. In furtherance of the Company's Application, the undersigned states:

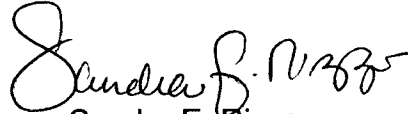
- 1) I am an attorney licensed to practice law in the District of Columbia.
- 2) EPCOR Merchant and Capital (US) Inc. is a corporation duly-organized, existing and in good standing under the laws in the State of Delaware.
- 3) In its previous application for authorization to import and export natural gas in accordance with Section 3 of the Natural Gas Act, filed in Docket No. 02-02-NG, an officer of EPCOR Merchant and Capital (FE) Inc. represented that the Company had the requisite corporate power and

authority to import natural gas to Canada from the United States and to export natural gas from the United States to Canada. DOE/FE granted the Company's initial application in DOE/FE Order No. 1754.

- 4) To the best of my knowledge, information, and belief formed based upon a review of the Company's Amended and Restated Certificate of Incorporation and contact with the Delaware Division of Corporations, EPCOR Merchant and Capital (US) Inc. continues to have the requisite corporate power to engage in the proposed natural gas import and export transactions.

Sincerely,

PRESTON GATES ELLIS &
ROUVELAS MEEDS LLP

A handwritten signature in black ink, appearing to read "Sandra E. Rizzo". The signature is written in a cursive, flowing style.

By: Sandra E. Rizzo