Cited as "1 ERA Para. 70,622"

Transco Energy Marketing Company (ERA Docket No. 85-30-NG), January 27, 1986.

DOE/ERA Opinion and Order No. 104

Order Granting Blanket Authorization to Import Natural Gas from Canada

I. Background

On November 8, 1985, Transco Energy Marketing Company (TEMCO) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act (NGA), for blanket authorization to import up to 1 Bcf of Canadian natural gas per day and a maximum of 730 Bcf over a two-year period beginning on the date mf first delivery. The applicant, a corporation registered in the state of Delaware, is a wholly-owned subsidiary mf Transco Energy Co. TEMCO engages in purchasing natural gas from different sources and reselling it to local distribution companies and end-users. It also acts as a broker of natural gas supplies on behalf of both producers and purchasers and makes transportation arrangements upon agreements with certain customers.

TEMCO proposes to import gas from various Canadian suppliers and producer associations and engage in short-term sales of the gas to a wide range of U.S. markets, including local distribution companies and end-users. TEMCO also would act as agent for its U.S. purchaser clients and Canadian supplier clients. Short-term sales price and volume terms, including adjustment provisions, would be negotiated between TEMCO or the U.S. buyers and Canadian sellers in order to meet the competition in the marketplace. In most cases, prices would be adjusted on a monthly basis and either party would be allowed to terminate on relatively short notice for any reason. Transactions would be premised on Canadian gas being competitive with alternate fuels and domestic gas in various U.S. spot markets. All such transactions would utilize existing pipeline facilities.

The applicant proposes to file quarterly reports with the ERA. Each report would indicate, by month, whether any sales have been made and the details of such transactions including the purchase and sales prices, volumes, any special contract price adjustments, take or make-up provisions, duration of the agreements, ultimate sellers and purchasers, transporters, points of entry, and markets served.

In support of its application, TEMCO asserts that the proposed transactions will be competitive and are not inconsistent with the public interest. TEMCO states that the deliverability surplus of Canadian gas and the recent agreement among Canadian jurisdictions permitting greater flexibility in Canadian border prices make Canadian gas prices competitive with prices of fuel oil and domestic gas in many U.S. markets. These proposed short-term sales are premised upon the Canadian gas remaining competitive at points of delivery.

II. Interventions and Comments

The ERA issued a notice of application on December 9, 1985, inviting protests, motions to intervene, or comments to be filed by January 8, 1986.1/ The ERA received 11 motions to intervene. One intervenor, Cenergy Exploration Company (Cenergy), opposed the application and requested "full hearing and comment procedures." Two parties, Piedmont Natural Gas Company (Piedmont) and Natural Gas Clearinghouse (Clearinghouse) did not oppose the application on its merits but did raise a number of substantive questions and made certain miscellaneous requests. The remaining parties, Northern Natural Gas Company, Texas Eastern Transmission Corporation, Philadelphia Electric Company, Public Service Electric and Gas Company, Pacific Gas Transmission Company, Columbia Gas Transmission Corporation, Consolidated Edison Company of New York, Inc., and Brooklyn Union Gas Company, neither opposed the proposal nor made further requests. This order grants intervention to all movants.

On January 24, 1986, TEMCO filed an answer to the objection of Cenergy and questions of Piedmont and Clearinghouse.

III. Decision

The application filed by TEMCO has been evaluated in accordance with the Administrator's authority to determine if the proposed import arrangement meets the public interest requirements of Section 3 of the NGA. Under Section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest." 2/ The Administrator is guided in this determination by the DOE's natural gas import policy guidelines.3/ Under these guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

The only party opposing the proposed import, Cenergy, is a domestic natural gas producer and a supplier to TEMCO and Transcontinental Gas Pipe Line Corporation (Transco). Cenergy states that it has additional supplies that could be marketed by TEMCO in lieu of Canadian gas. Cenergy expresses its

concern that spot imports may displace domestic sales, including Cenergy sales, and result in harm to Cenergy and other producers. In opposing the application, Cenergy says that (1) TEMCO's application fails to demonstrate that the imported gas can be marketed competitively, and simultaneously Cenergy is precluded from rebutting the presumption that the imports can be competitive, because terms and conditions on each spot import and the markets for which each is intended are unspecified; (2) because the application identifies no potential Canadian suppliers, prior consideration of suppliers' historical reliability and, therefore, supply security are impossible; and (3) quarterly reports by TEMCO, after the fact, are insufficient to overcome these concerns and to protect the public interest. Cenergy further states that "full hearing and comment procedures" are required.

Cenergy is a domestic natural gas producer with current excess deliverability. It is competition, not the lack of it, in the markets served that places this intervenor in an understandably uncomfortable position. However, as noted in earlier decisions on similar blanket import arrangements,4/ the DOE strongly supports the establishment of a spot market, and the competition such short-term, spot sales provide.5/ Natural gas prices, and energy prices generally, have declined in response to currently excess supplies. The development of a spot market in natural gas is a natural evolution towards a freer market and appropriately enhances the competitive price pressure encouraging producers, pipelines, and distributors to renegotiate old arrangements to respond to a competitive market.

As the ERA has stated in earlier decisions on similar applications, spot market sales are quick, short-term transactions that adapt gas sales terms to changing market conditions and that would not be undertaken by buyers if terms were not competitive. The ERA has found spot sales under blanket import arrangements, such as proposed by TEMCO, to be in the public interest without knowing the precise terms of each sale, inasmuch as each sale is freely negotiated and would only take place if the gas was marketable, competitively priced, and needed.6/ It is not essential to know in advance the terms of each sale as long as the broad parameters of such sales are known, which is the case with short-term, spot sales freely negotiated and easily terminated. Establishment of a quarterly reporting requirement adequately safeguards the public interest in this type of arrangement.

Further, the ERA has taken the position that the security of the import supply is not a major issue when the imported gas is to be purchased on a short-term basis, Nor is there a material question of the historical reliability of an individual Canadian supplier, a question raised by Cenergy, when a sale is short-term and an importer may choose among alternative,

willing Canadian suppliers.

The ERA finds that Cenergy has not raised issues or presented evidence that would support a finding that the arrangement is not competitive or that would support disapproval of the authorization on other grounds. In addition, the ERA finds further hearing and comment procedures to be unnecessary because the specific request for "full hearing and comment procedures" does not identify, as required by the ERA's procedural rules, the additional procedures requested nor provide justification for any specific procedure.7/

Piedmont and Clearinghouse made substantive comments but did not oppose the application. Piedmont's concern relates to an existing import authorization held by Transco in connection with which Transco has entered into a contract amendment with its single supplier, TransCanada, providing for a two-part demand/commodity charge in the purchase of that imported gas.8/ Piedmont opposes the proposed as-billed passthrough of the two-part rate in that docket, and reiterates its opposition here.

In contrast, TEMCO is proposing to import Canadian gas from various Canadian suppliers for resale into the short-term U.S. spot market in transactions that, while they must be priced competitively with alternative spot market supplies in order to attract buyers, have not yet been formulated and for which no two-part demand/commodity charges have been proposed. The issue identified in another docket and restated here by Piedmont is not material to TEMCO's proposal for short-term imports and resales, and is appropriately addressed where Piedmont first raised it.

Clearinghouse states that it has an agreement with TEMCO under which Clearinghouse would act as agent for TEMCO with respect to TEMCO's importation of Canadian gas that importation under this agency relationship would occur under Clearinghouse's blanket authorization to import Canadian natural gas.9/ While Clearinghouse does not object to the substantive merits of TEMCO's application, it objects to TEMCO's request for expedited consideration, unless it can be demonstrated that there is insufficient capacity under Clearinghouse's blanket authorization. Clearinghouse further requests that any authorization not be made effective before December 31, 1986, the expiration date of the particular agency agreement between Clearinghouse and TEMCO.

As represented by Clearinghouse, the particular agency relationship providing for Clearinghouse to act as agent for TEMCO regarding certain TEMCO Canadian gas imports is pursuant to a private agreement between the parties. Although clearly of concern to the parties, such an agreement is a private contractual matter in which the ERA believes government intervention is

inappropriate. Clearinghouse's request that any authorization not be made effective before December 31, 1986, is denied.

After taking into consideration all the information in the record of this proceeding, I find that granting TEMCO blanket authority to import up to 730 Bcf of Canadian natural gas over a term of two years for sale in the domestic short-term, spot market is not inconsistent with the public interest.10/

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 up to 1 Bcf per day of natural gas from Canada for a total of up to 730 Bcf over a two-year period beginning on the date of first delivery.

B. TEMCO shall notify the ERA in writing mf the date mf first delivery of natural gas imported under Ordering Paragraph A above within two weeks after the date of such delivery.

C. With respect to the imports authorized by this Order, TEMCO shall file with the ERA in the month following each calendar quarter, quarterly reports indicating, by month, whether sales have been made, and if so, giving the details of each transaction. The report shall include the purchase and sales price, volumes, any special contract price adjustments, take or make-up provisions, duration of the agreements, ultimate sellers and purchasers, transporters, points of entry, and markets served.

D. The motions to intervene as set forth in this Opinion and Order are hereby granted, subject to the administrative procedures in 10 CFR Part 590, provided that participation of the 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.

Issued in Washington, D.C., On January 27, 1986.

--Footnotes--

1/ 50 FR 50195, December 9, 1985.

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

3/ 49 FR 6684, February 22, 1984.

4/ See Cabot Energy Supply Corporation, 1 ERA Para. 70,124 (February 26, 1985); Northwest Alaskan Pipeline Company, 1 ERA Para. 70,585 (February 26, 1985); Tenngasco Exchange Corporation and LHC Pipeline Company, 1 ERA Para. 70,596 (May 6, 1985); Dome Petroleum Corporation, 1 ERA Para. 70,601 (July 2, 1985); U.S. Natural Gas Clearinghouse, Ltd., 1 ERC Para. 70,602 (July 5, 1985); Northridge Petroleum Marketing U.S., Inc., 1 ERA Para. 70,605 (September 27, 1985); Northwest Pipeline Corporation, 1 ERA Para. 70,611 (December 10, 1985); Petro-Canada Hydrocarbons Inc., unpublished (January 3, 1986).

5/ In Increasing Competition in the Natural Gas Market; Second Report Required by Section 123 of the Natural Gas Policy Act of 1978, submitted in January 1985, the DOE observed that an active spot market will allow the natural gas market allocate risks efficiently and will help minimize price and supply fluctuations as the market moves from a tightly regulated environment towards fully competitive market conditions. See Summary, at S-1, S-5, and Chapter 6, at 75.

6/ See supra, note 4.

7/ See 10 CFR 590.310-590.333.

8/ See Transcontinental Gas Pipe Line Corporation. ERA Docket No. 81-29-NG.

9/ See U.S. Naturals Clearinghouse, Ltd., 1 ERA Para. 70,602 (July 5, 1985).

10/ Because the proposed importation of gas will use existing pipeline facilities, 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.