

Cited as "1 FE Para. 70,231"

Distrigas Corporation (FE Docket No. 89-16-LNG), July 14, 1989.

DOE/FE Opinion and Order No. 322

Order Granting Authorization to Import Liquefied Natural Gas from Algeria and Granting Interventions

I. Background

On February 27, 1989, Distrigas Corporation (Distrigas) filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act (NGA), to import liquefied natural gas (LNG) from Algeria. Distrigas requested authorization to import up to 17 cargoes of LNG annually (125,000 cubic meters per ship) until a total of 48 cargoes had been imported. The total amount of LNG to be imported would be 144 million MMBtus or approximately 140 Bcf, which Distrigas anticipates would be imported within three to five years.

The LNG would be purchased from Sonatrading Amsterdam B.V. (Sonatrading), a wholly owned subsidiary of Sonatrach, the Algerian national energy corporation, and sold to Distrigas' affiliate, Distrigas of Massachusetts (DOMAC), at DOMAC's existing LNG terminalling facilities in Everett, Massachusetts. DOMAC would resell the LNG to a variety of current and new customers pursuant to rate schedules approved by the Federal Energy Regulatory Commission.

Distrigas is a wholly owned subsidiary of Cabot Corporation, a Delaware Corporation. Currently, Distrigas is authorized by DOE/ERA Opinion and Order No. 271 (Order 271) 1/ to import up to 17 cargoes of LNG per year through October 1, 2003, pursuant to an amended 1976 sales and purchase agreement (amended 1976 agreement) between Distrigas and Sonatrach. On December 11, 1988, Distrigas and Sonatrading entered into a separate sales and purchase agreement (December 1988 agreement) which forms the basis of this application. The December 1988 agreement provides for the sale by Sonatrading to Distrigas of a minimum of eight and a maximum of 17 cargoes of LNG per contract year (March 15 through March 14), until the total 48 cargoes have been imported.

Under the December 1988 agreement, the price of the LNG, F.O.B. Algeria, to be paid to Sonatrading would be the higher of: (1) the reference price, which is 63 percent of a price derived from a formula utilizing the price of alternative fuels, (2) the minimum price, which varies on a seasonal basis from a low of \$1.35 from March 15, 1989, through October 14, 1989, to a high of \$1.70 after October 14, 1991, or (3) 63 percent of the actual sales price received by DOMAC.

Although the December 1988 agreement calls for Distrigas to take a minimum of eight cargoes of LNG during a contract year, it is not obligated to take any cargoes if, ten days prior to shipping, the reference price is lower than the minimum price. Also, if either the reference price or the minimum price is higher than the prevailing market price (which is defined as 63.24 percent of the commodity price for natural gas delivered to major gas distribution companies in the New England market area), Distrigas is not obligated to purchase any cargoes of LNG unless Sonatrading is willing to sell the LNG at the prevailing market price.

To the extent that Distrigas takes less than 17 cargoes of LNG during a contract year, it has the right to purchase additional quantities of LNG in succeeding year(s) until the total of such additional purchases equals the amount by which the original purchases were less than the 17 cargoes of LNG.

The December 1988 agreement also provides a mechanism for distinguishing between LNG imported and purchased pursuant to the amended 1976 agreement and the December 1988 agreement. The highest priced 120,000 MMBtu's per day of LNG sold by DOMAC will be attributed to the amended 1976 agreement, and any remaining lower priced sales will be assumed to have been made under the December 1988 agreement.

In support of its application, Distrigas asserted that availability of the proposed imports will serve the public interest since they can provide a market-responsive source of LNG to the northeastern U.S., especially during the winter peaking season. In addition, Distrigas contended that the import arrangement will provide a reliable and secure source of supply.

II. Interventions

The FE issued a notice of the application on April 20, 1989, inviting protests, motions to intervene, notices of intervention, and comments to be filed by September 8, 1989.² Motions to intervene without comment on the application were filed by MASSPOWER, Boston Gas Company, Long Island Lighting Company, Bay State Gas Company, the Berkshire Gas Company, The Connecticut Light and Power Company, Essex County Gas Company, Fall River Gas Company, New Jersey Natural Gas Company, the Providence Gas Company, South Jersey Gas Company, the Southern Connecticut Gas Company, and Valley Gas Company. Southern Energy Company (Southern) filed a motion to intervene out of time without comment on the application. With regards to Southern's late intervention, since no delay to the proceeding nor prejudice to any party will result, the late filing is accepted. This order grants intervention to all movants.

III. Decision

Distrigas' application has been reviewed to determine if it conforms with Section 3 of the NGA. Under Section 3, an import must be authorized unless there has been a finding that the import "will not be consistent with the public interest." 3/ This determination is guided by the DOE's natural gas policy guidelines.4/ Under these guidelines, the competitiveness of the import arrangement in the markets served is the primary consideration for meeting the public interest test, but need for the supply and security of the supply are also important considerations.

The FE has determined that Distrigas' proposed import arrangement, as set forth in its application, is consistent with the DOE policy guidelines. The market-responsive price and take provisions of the import arrangement meet the competitiveness requirement of the guidelines. The terms of the 1988 agreement are essentially identical to those contained in the amended 1976 agreement which Order 271 found to be competitive, needed, and secure. In fact, the 1988 agreement contains a "market-out clause" which was not included in the amended 1976 agreement and which further ensures that only competitively priced, needed gas would be imported under the 1988 agreement. Finally, no party intervened in opposition to Distrigas' import proposal. Therefore, after taking into consideration all the information in the record of this proceeding, I find that granting Distrigas authority to import 48 cargoes of LNG pursuant to its 1988 agreement with Sonatrading, as set forth in its application in this docket, is not inconsistent with the public interest.

ORDER

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

A. Distrigas Corporation (Distrigas) is authorized to import 48 cargoes of liquefied natural gas (LNG) from Algeria in accordance with the terms of the agreement for the Sale and Purchase of Liquefied Natural Gas of December 11, 1988 (1988 agreement), between Distrigas and Sonatrading Amsterdam, B.V. (Sonatrading), as set forth in the application filed in this docket. The LNG is to be imported at the LNG regasification facilities of Distrigas of Massachusetts (DOMAC) at Everett, Massachusetts.

B. Distrigas 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 first delivery of LNG authorized in Ordering Paragraph A above within two weeks of such delivery.

C. Distrigas shall notify the office of Fuels Programs of the final (48th) shipment of LNG authorized in Ordering Paragraph A above, or of the termination of the 1988 agreement for any other reason, within two weeks of

that final shipment or that termination.

D. With respect to LNG imports authorized by this order, Distrigas shall file with the DOE within 30 days following each calendar quarter, quarterly reports indicating, by month, transporters and LNG tankers used, the total volumes of imports in Mcf, the average landed cost per MMBtu at the point of import, the average selling price per MMBtu to DOMAC's customers and Sonatrading's portion of that price. The reports shall also provide details of each transaction, including the names and geographic location of DOMAC's customers, the volumes in Mcf taken by each of DOMAC's customers, and the estimated or actual duration of each sales arrangement between DOMAC and its customers.

E. The motions to intervene, as set forth in this Opinion and Order, are hereby granted, 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 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 July 14, 1989.

--Footnotes--

1/ 1 ERA Para. 70,132 (September 16, 1988).

2/ 54 FR 18586, May 1, 1989.

3/ 15 U.S.C. Sec. 717(b).

4/ 49 FR 6684, February 22, 1984.