

Cited as "1 ERA Para. 70,125"

Cabot Energy Supply Corporation (ERA Docket No. 84-09-LNG), April 26, 1985.

DOE/ERA Opinion and Order No. 72A

Order Denying Rehearing

I. Introduction

On February 26, 1985, the Economic Regulatory Administration (ERA) issued DOE/ERA Opinion and Order No. 72 (Order No. 72) 1/ granting Cabot Energy Supply Corporation (CESCO) a two-year blanket authorization to import liquefied natural gas (LNG) for short-term and spot market sales, and granting interventions.

The Brooklyn Union Gas Company (Brooklyn Union) and Boston Gas Company (Boston Gas) jointly filed a request for rehearing of Order No. 72 on March 28, 1985. The joint request seeks to have the following condition attached to the authorization:

CESCO import arrangements authorized hereby shall be without detriment or disadvantage to customers of existing import projects who are dependent upon existing projects' gas supplies.

The joint request also seeks to have the ERA require a separate public notice and comment period for each arrangement that CESCO would enter into before an LNG ship would sail for the United States. Order No. 72 instead requires CESCO to inform the ERA of individual arrangements before the ship sails, and to furnish quarterly reports showing, by month, if spot sales took place and the details of any spot sales that may have taken place.

Brooklyn Union and Boston Gas previously filed separate petitions to intervene in this docket. They are customers of Distrigas of Massachusetts Corporation (DOMAC) which, like CESCO, is a wholly-owned subsidiary of Cabot Corporation of Massachusetts (Cabot). Brooklyn Union and Boston Gas purchase LNG and LNG terminalling service under MAC's GS-1 and TS-1 rate schedules. The LNG DOMAC sells to Brooklyn Union and Boston Gas is imported from Algeria by Distrigas Corporation (Distrigas), also a subsidiary of Cabot. Its petition to intervene, Brooklyn Union requested the same condition and the same notice and comment period described above. Boston Gas, in its petition to intervene, did not ask for this condition or a notice and comment period, but was concerned

that approval of CESCO's application may jeopardize its LNG supply from DOMAC. It also expressed concern about compatibility with existing use of DOMAC's terminalling facility, how DOMAC customers would be compensated, at what rate they would be compensated if the terminalling facility is utilized, the effect on availability of LNG volumes to LNG customers, and how deliveries of CESCO volumes would be transported from the terminalling facility to the ultimate buyers.

II. Decision

The ERA has carefully reviewed the recommended condition and requested notice and comment requirement. We continue to believe that the condition proposed by Brooklyn Union and Boston Gas, to assure deliveries of LNG from DOMAC, is unnecessary. DOMAC has contracts with Brooklyn Union and Boston Gas to provide them with Algerian LNG imported by Distrigas under contract to Sonatrach, the Algerian supplier. Distrigas, DOMAC and CESCO, although affiliates, are separate entities with individually enforceable contracts. Any change to those contracts must be negotiated by the parties. The rehearing request asks the ERA to intervene in what essentially are contract matters between the parties. Proposing the condition is an attempt to have the ERA guarantee supplies rather than relying on the contracts underpinning these supplies. The ERA does not intend to intervene in contract matters between parties and believes strongly that the parties should resolve such problems themselves. The contracts are the primary recourse available to the parties in matters of this type.

If the imports by CESCO under the blanket authorization result in violations of the contracts, and thereby of the certificates of convenience and necessity issued by the FERC to DOMAC and Distrigas, or of Distrigas' authorization under Section 3 of the Natural Gas Act, Brooklyn Union and Boston Gas have substantial remedies available to them before the FERC and the ERA.^{2/} Furthermore, if improper allocation of costs occur due to the CESCO imports, the parties again have full recourse before the FERC in appropriate rate proceedings.

The joint request also petitioned the ERA to reconsider its denial of Brooklyn Union's request to require a notice and comment period for each CESCO import arrangement before the gas is imported. The joint request alleges that no delay would occur as a result of the requirement because CESCO is already required to notify the ERA of the transaction before the initial ship sails.

The ERA, after consideration of the concerns raised by the joint request, again denies Brooklyn Union's and Boston Gas' request to require a

notice and comment period for each transaction. The uncertainties created as to whether the transaction would be approved would fatally inhibit the use of this blanket authorization mechanism in the short-term, spot market. Furthermore, the ERA sees no need for such a level of government intervention in these types of transactions. Spot market sales are quick, short-term transactions designed to adapt gas sales to changing market conditions. Each spot sale is a voluntarily negotiated, short-term arrangement and each spot sale proposed by CESCO would be in the public interest, inasmuch as it would not take place unless the gas was competitively priced, marketable and needed. The short-term nature of the transactions, coupled with the two-year limit on the blanket authorization and the quarterly reporting requirement, adequately protect the public interest and provide the ERA sufficient opportunity to monitor these transactions and their impact.

Order

For the reasons stated above, pursuant to Section 19(a) of the Natural Gas Act, the joint request for rehearing filed by the Brooklyn Union Gas Company and Boston Gas Company is hereby denied.

Issued in Washington, D.C., April 26, 1985.

--Footnotes--

1/ Cabot Energy Supply Corporation, DOE/ERA Opinion and Order No. 72, issued February 26, 1985 (1 ERA Para. 70,124).

2/ Any remedies under the certificates of convenience and necessity would be undertaken before the FERC pursuant to the Secretary of Energy's delegation to the FERC in Delegation Order No. 0204-112 (49 FR 6690, February 22, 1984). Remedies for violations of Section 3 authorizations would be sought from the ERA.