

Cited as "1 ERA Para. 70,524"

Valero Transmission Company (ERA Docket No. 80-08-NG), November 20, 1980.

Opinion and Order Amending Authorization to Export Natural Gas

[Opinion and Order]

I. Background

On February 7, 1980, Valero Transmission Company (Valero) filed with both the Economic Regulatory Administration (ERA) and the Federal Energy Regulatory Commission (FERC) 1/ an "Amended Petition to Amend Export Authorization and Motion to Substitute Petitioner.%' Valero is the latest in a series of companies seeking to be substituted as the successor authorized to export natural gas to Compania Nacional de Gas S.A. (Nacional), Piedros Negras, Mexico.2/

In its petition, Valero requests that the export authorizations previously granted to TGUC be amended to substitute Valero as the authorized exporter to Nacional. Valero asserts that it is the ultimate successor to TGUC and the immediate successor to TGUD.3/

In addition Valero references other authorizations needed to effectuate the export granted by the FPC in Docket Nos. CP62-288 and CP70-204 to TGUC, and requests that it be substituted in lieu of TGUC. Subsequently, on May 13, 1980, Valero filed an Amendment to Amended Petition with both ERA and FERC to include the authorizations granted in FPC Docket CP67-73.

The authorization in Docket CP65-270 permits TGUC to export up to 10,000 thousand cubic feet (Mcf) of gas per day to Nacional until January 1, 1986, when the contract between TGUC and Nacional expires. During 1979, TGUD exported 452,130 Mcf to Nacional.4/

II. Jurisdiction

Resolution of the Valero petition requires a basic determination of the regulatory responsibilities of ERA and FERC with respect to this long-standing export authorization. The authority of the Administrator to regulate natural gas import and exports is clearly delineated with respect to filings on or after October 1, 1977, and also to certain pending proceedings transferred by rule at that time.5/ The jurisdiction of the FERC with respect to pending

cases not transferred is also clear.^{6/} Thus, action with respect to TGUD, particularly its October 29, 1975, petition filed in FPC Docket Nos. CP62-288, CP65-270 and CP70-204, as well as any subsequent filings is uniquely the responsibility of the FERC.

Similarly, because of the division of jurisdiction set forth in DOE Delegation Orders 0204-54 and 0204-55, it is apparent that FERC is the proper regulatory body to decide those issues related to the point of export, including Presidential Permits issued under Executive Order 10485, and any facilities needed to effect the export raised by Valero in Docket Nos. CP65-270, CP67-73, and CP70-204.^{7/}

Accordingly, the only issue raised by Valero, which need be decided by ERA, is whether Valero can or should be substituted as the authorized exporter of natural gas to Nacional.

III. Decision

Based on the representations made by Valero in its application and its counsel in subsequent correspondence included in the record of this case, and in the absence of any information to the contrary, we find that Valero is the successor to TGUD. As such we have no reason not to substitute Valero for TGUD as the authorized exporter to Nacional, except that such substitution must be wholly conditioned on a decision by the FERC in FPC Dockets CP62-288, CP65-270, CP67-73, and CP70-204 that TGUD should be substituted as the authorized exporter to Nacional for the period August 31, 1972, until January 1, 1980. ERA has no authority to substitute Valero for TGUD until TGUD is itself substituted for TGUC and is determined to be the currently authorized exporter to Nacional. A decision by the FERC not to substitute TGUD for TGUC will nullify this decision.

Order

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

Effective January 1, 1980, Valero Transmission Company is authorized to continue exporting natural gas to Compania Nacional de Gas, S.A. as the successor to Texas Gas Utilities Division, in accordance with the contract in effect on the date of this Order, on the condition that the Federal Energy Regulatory Commission amend the authorizations in Docket Nos. CP62-288, CP65-270, CP67-73, and CP70-204 to substitute Texas Gas Utilities Division for Texas Gas Utilities Company for the period

August 31, 1972 to January 1, 1980.

Issued in Washington, D.C. on November 20, 1980.

--Footnotes--

1/ Notice of receipt of Valero's petition was issued by ERA on March 24, 1980 (45 FR 20154, March 27, 1980). ERA received no petitions to intervene, comments, or protests.

2/ Original authorization to export natural gas to Nacional was granted to Texas Gas Utilities Company (TGU Co.) by Federal Power Commission (FPC) order issued September 10, 1940, in Docket No. G-117. By order issued November 28, 1961 (26 FPC 770), in Docket No. CP61-280, Texas Gas Utilities Corporation (TGU Corp.) was authorized to continue the exportation in lieu of TGU Co. By order issued December 20, 1962 (28 FPC 1075), in Docket No. CP62-287, Associated Oil and Gas Company (Associated) was authorized to continue the exportation in lieu of TGU Corp. By order issued May 14, 1965 (33 FPC 1020), in Docket Nos. CP62-288, CP65-269, and CP65-270, Texas Gas Utilities Company (TGUC) (not related to TGU Co.) was authorized to continue the exportation in lieu of Associated. On October 29, 1975, Texas Gas Utilities Division (TGUD) of Lo-Vaca Gathering Company (Lo-Vaca) filed a petition with the FPC in Docket Nos. CP65-270 and CP70-204 to substitute TGUD for TGUC as the authorized exporter. Action on that petition is still pending before the FERC.

3/ According to Valero, TGUC merged into Lo-Vaca, effective August 31, 1972, and export operations of TGUC were assumed and continued without change by TGUD. As a result of a litigation agreement Lo-Vaca was separated from its parent company, Coastal States Gas Producing Company (Coastal) until January 1, 1980, at which time Coastal became Valero Energy Corporation (Valero Energy) and the operations of TGUD were continued by Valero, a subsidiary of Valero Energy.

4/ See Table 5, Natural Gas Pipeline Exports, 1978-79, Energy Data Report, "U.S. Imports and Exports of Natural Gas 1979," DOE/EIA-0188 (79), June 3, 1980.

5/ On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. No. 95-91, 91 Stat. 565 (August 4, 1977), and Executive Order No. 12009 (42 FR 46267, September 15, 1977), the FPC ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the FERC on October 1, 1977. On that date, jurisdiction over exports of natural gas, pursuant to Section 3 of

the Natural Gas Act (NGA), became vested in the Secretary of Energy pursuant to Sections 301 and 402(f) of the DOE Act. The Secretary delegated this responsibility to the Administrator of the ERA in DOE Delegation Order 0204-4 (42 FR 60726, November 29, 1977), except with respect to the decision of pending cases assigned to the FERC by rule. Later the Secretary in DOE Delegation Orders 0204-54 and 0204-55 (44 FR 56735, October 2, 1979) delineated the roles of ERA and FERC in deciding applications to import or export natural gas.

6/ 10 CFR 1000.1(d) provides in part that:

"All proceedings (other than proceedings described in Subsections (b) and (c)) before the Federal Power Commission or Interstate Commerce Commission will be conducted by the Federal Energy Regulatory Commission." (42 FR 55534, October 17, 1977).

The petitions filed in FPC Docket Nos. CP62-288, CP65-270 and CP70-204 were not included in subsections (b) and (c).

7/ See Executive Order 10485, "Providing for the performance of certain functions heretofore performed by the President with respect to electric power and natural gas facilities located on the border of the United States" (18 FR 5397; 3 CFR, 1949-53 Comp. 970).