

Cited as "1 ERA Para. 70,114"

El Paso Eastern Company (ERA Docket No. 77-006-LNG), September 25, 1981.

DOE/ERA Opinion and Order No. 4A

Order Separating Consolidated Dockets and Permitting Withdrawal of Application for Authorization to Import Liquefied Natural Gas from Algeria

[Opinion and Order]

### I. Background

This proceeding involves a proposal by El Paso Eastern Company (Eastern) and others to import, terminal, regasify, and liquefied natural gas from Algeria into the United States (the El Paso II Project).<sup>1/</sup> In 1976 and 1977 several applications and amended applications with respect to the El Paso II Project were filed with the Federal Power Commission (FPC) under the Natural Gas Act (NGA). Eastern applied under Section 3 of the NGA for authorization to import the LNG, and Eastern, Terminal, EPNG, United LNG, and United Gas Pipeline (UGP) applied under Section 7 of the NGA for various certificates of public convenience and necessity.<sup>2/</sup> Because the various applications contained common issues of fact and law, the FPC by order dated April 14, 1977, consolidated all of the proceedings under FPC Docket Nos. CP77-330, et al.

On October 1, 1977 the Department of Energy (DOE) was activated and the Federal Energy Regulatory Commission (FERC) was established as the successor to the FPC. Under sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)), the authority under Section 3 of the NGA to authorize natural gas imports was vested in the Secretary of Energy. The Secretary with respect to certain pending cases, including the El Paso II Project, delegated to the FERC the authority to carry out that function to a specific stage of the proceeding.<sup>3/</sup> The El Paso II case was to continue under FERC jurisdiction until timely filing of all briefs on exceptions to the Initial Decision of the presiding FERC Administrative Law Judge, after which the record was to be transferred to the Secretary for decision.<sup>4/</sup>

The El Paso II record was transferred to the Secretary of Energy on December 7, 1977 and assigned ERA Docket No. 77-006-LNG. The Secretary, under DOE Delegation Order 0204-4, had previously delegated the authority to issue a final order in the proceeding to the Administrator of the Economic Regulatory

Administration (ERA). Further delegation orders delineating the areas of jurisdiction between the ERA and the FERC with respect to natural gas import and export applications were published in the Federal Register on October 17, 1978.<sup>5/</sup>

On December 21, 1978, the Administrator of ERA issued Opinion and Order No. 4 (Opinion No. 4) denying the application of Eastern for authorization under Section 3 of the Natural Gas Act to import LNG from Algeria into the United States.<sup>6/</sup>

On January 19, 1979, El Paso, Terminal, Atlantic, and the People of the State of California and Public Utilities Commission of the State of California (CPUC) filed petitions for rehearing of Opinion No. 4. On January 22, 1979, UGP and United LNG filed a joint petition for rehearing of Opinion No. 4.

On February 20, 1979, the Administrator of ERA issued an order granting the petitions for rehearing. On October 16, 1979, the Administrator of ERA issued a Notice of Conference to discuss the issues upon which the petitioners sought rehearing.<sup>7/</sup>

## II. Notices of Withdrawal

On June 1, 1981, ERA received a notice of withdrawal of applications from Eastern on behalf of itself, EPNG, Terminal and Atlantic. Subsequently, UGP and United LNG jointly filed a similar notice with ERA on July 15, 1981.<sup>8/</sup> No responses to the notices have been filed with ERA by any of the parties.

In their notices both Eastern and UGP state that during March 1981, several agreements relevant to this proceeding were terminated due to the nonoccurrence of conditions precedent specified in such agreements.<sup>9/</sup> Eastern and UGP state that, with the termination of these agreements, the participants recognize that the El Paso II Project cannot be implemented as originally proposed.

Because Eastern and UGP consider the several applications pending before ERA and the FERC with respect to the El Paso II Project to be dependent upon the continued existence of the terminated agreements, they have requested the Administrator of ERA to authorize the withdrawal of the applications consolidated in ERA Docket 77-006-LNG, except for FPC/FERC Docket No. CP77-269, and to terminate further proceedings.

## III. Separation of Consolidated Dockets

On October 17, 1978, Delegation Order Nos. 0204-25 to ERA and 0204-26 to FERC went into effect. They clearly delineated the extent of ERA's and the FERC's authorities over natural gas imports. Paragraph (a) of Order 0204-25 delegated to the Administrator of ERA the authority under Section 3 of the NGA to determine whether importation of natural gas is not inconsistent with the public interest insofar as that determination is based on certain specific considerations generally dealing with broad policy concerns. Paragraph (c) specifically withheld from the Administrator authority under Section 3 to approve or disapprove an import based on the construction and operation of facilities, the site at which they shall be located, or the place of entry, except that the Administrator may approve or disapprove an import based on facility and site related issues to the extent they relate to the security of supply, the effect on U.S. balance of payments, and consistency with DOE regulations and policy.

On the other hand, Section 1 of Delegation Order No. 0204-26, authorized the FERC to carry out all functions under Section 3 of the NGA to approve or disapprove the construction and operation of particular facilities and the site at which they would be located, and with respect to imports, the place of entry. In addition, the delegation order specified that FERC, to the extent of the Secretary of Energy's authority, is to carry out all functions under Sections 4, 5, and 7 of the NGA.<sup>10</sup> Thus, in issuing Opinion No. 4 on December 21, 1978, ERA dealt only with the issue of whether the proposed import was not inconsistent with the public interest pursuant to Section 3 of the NGA.

In view of DOE Delegation Order No. 0204-25 and its successor No. 0204-54, it is clear that we may act only on Eastern's request to withdraw its Section 3 application filed originally in FPC Docket CP77-330 and that we should not act upon Eastern's other requests or the joint request of UGP and United LNG which are under Section F. Therefore, we are separating the docket containing Eastern's Section 3 import application now consolidated in ERA Docket No. 77-006-LNG, so that the FERC may act upon the remaining Section 7 applications which Eastern, UGP and United LNG have requested permission to withdraw.<sup>11</sup>

ERA intends to retain the record compiled in FPC Docket CP77-330, and transfer to the FERC the individual records now extant in the other dockets.

#### IV. Permission to Withdraw Import Application

Eastern in noticing withdrawal of its application for authorization to import LNG from Algeria has complied with the general requirements of 18 C.F.R. Sec. 1.11(d). Section 1.11(d)(1) prohibits the withdrawal of a pleading

without the express permission of the Administrator of ERA.

In view of our denial of Eastern's application in Opinion No. 4, and the lack of response to Eastern's notice by any party to the proceeding, we can find no purpose which might be served by continuation of the proceeding. Therefore we permit Eastern to withdraw its application to import LNE under Section 3 (FPC Docket CP77-330) and will close the proceeding without further action. We are not acting on Eastern's notice of withdrawal for other dockets in the El Paso II proceeding or the joint notice of UGP and United LNG. The FERC rather than the ERA is the proper agency to decide whether to permit withdrawals of the applications in those dockets.

### Order

For the reasons set forth above, ERA hereby orders that,

A. Federal Power Commission (FPC) Docket Nos. CP77-269, CP77-270, CP77-271, CP77-272, CP77-330, CP77-331, and CP77-332, consolidated by FPC order issued April 14, 1977 and later transferred to the Economic Regulatory Administration (ERA) and identified as ERA Docket No. 77-006-LNG, et al. shall be separated into individual dockets.

B. FPC Docket No. CP77-330 shall be retained by ERA as ERA Docket No. 77-006-LNG.

C. FPC Docket Nos. CP77-269, CP77-270, CP77-271, CP77-272, CP77-331, and CP77-332 shall be transferred to the Federal Energy Regulatory Administration (FERC).

D. Pursuant to authority under Section 3 of the Natural Gas Act (NGA), the application of El Paso Eastern Company (Eastern) under Section 3 of the NGA pending in ERA Docket No. 77-006-LNG shall be considered withdrawn by Eastern and ERA Docket No. 77-006-LNG shall be closed without further action.

Issued in Washington, D.C. on September 25 1981.

--Footnotes--

1/ Other participants include: El Paso LNG Terminal Company (Terminal), El Paso Natural Gas Company (EPNG), El Paso Atlantic Company (Atlantic), United LNG Company (United LNG), United Gas Pipeline Company (UGP), and the Algerian National Oil and Gas Company Societe' Nationale Pour Le Recherche, la Production, le Transport, la Transformation, et la

Commercialisation des Hydrocarbures (Sonatrach).

2/ The applications were docketed as follows:

FPC Docket No. CP77-269--Terminal's Section 7 application for a certificate to construct and operate terminal facilities.

FPC Docket No. CP77-270--Eastern's Section 7 application for a certificate to resell gas to United LNG.

FPC Docket No. CP77-271--UGP's Section 7 application for a certificate to construct facilities needed to receive gas from United LNG.

FPC Docket No. CP77-272--United LNG's Section 7 application for a certificate to resell gas to UGP.

FPC Docket No. CP77-330 (Previously CP73-258)--Eastern's Section 3 application for authorization to import LNG.

FPC Docket No. CP77-331 (Previously CP73-259)--Eastern's Section 7 application for a certificate to resell gas to EPNG.

FPC Docket No. CP77-332 (Previously CP73-260)--EPNG's Section 7 application for a certificate to construct and operate pipeline facilities and to transport the gas purchased from Eastern.

3/ See DOE Delegation Order No. 0204-1, (42 FR 55450, October 17, 1977) and Rule regarding Transfer of Proceedings to the Secretary of Energy and the Federal Energy Regulatory Commission, 10 CFR 1000.1 (42 FR 55534, October 17, 1977).

4/ A detailed review of this proceeding can be found in the Initial Decision of the presiding Federal Energy Regulatory Commission (FERC) Administrative Law Judge issued on October 25, 1977 in FERC Docket Nos. CP77-330, et al., El Paso Eastern Company, et al.

5/ DOE Delegation Order Nos. 0204-25 and 0204-26 (43 FR 47769, October 17, 1978). Delegation Order No. 0204-25, addressed to ERA, amended Delegation Order No. 0204-04. Delegation Order Nos. 0204-25 and 0204-26 were amended subsequently by DOE Delegation Order Nos. 0204-54 and 0204-55 (44 FR 56735, October 2, 1979).

6/ DOE/ERA Opinion and Order No. 4, ERA Docket No. 77-006-LNG, El Paso

Eastern Company, et al., (1 ERA Para. 70,104 Federal Energy Guidelines).

7/ The conference was held on October 25, 1979 in Houston, Texas. Appearances were made on behalf of El Paso, UGP, United LNG, CPUC, FERC, the Houston Audubon Society, and the Sierra Club.

8/ Both filings were made pursuant to 18 C.F.R. 1.11(d). Eastern's notice was served on all parties on June 1, 1981, and a copy was filed with the FERC. The joint notice of UGP and United LNG was served on all parties on July 14, 1981, and a copy was filed with the FERC.

9/ The agreements cited by Eastern and by UGP are:

1. Contract for the Sale and Purchase of Liquefied Natural Gas, dated October 29, 1975, between Eastern, Atlantic and Sonatrach.

2. Six Transportation Agreements, dated June 12, 1977, between Eastern, Atlantic and Sonatrach.

3. LNG Sales Agreement, dated October 11, 1976, between Eastern and El Paso LNG.

4. LNG Terminalling Agreement, dated October 11, 1976, between Eastern and El Paso LNG.

5. Natural Gas Sales Agreement, dated October 11, 1976, between Eastern and EPNG.

6. Natural Gas Sales Agreement, dated October 11, 1976, between Eastern and United LNG.

10/ DOE Delegation Order Nos. 0204-54 and 0204-55 became effective on October 2, 1979, and superseded the earlier delegation orders. They remain in effect at present and maintain the same division of functions between the ERA and the FERC.

11/ Eastern has requested to withdraw Section 7 applications in FPC/FERC Docket Nos. CP77-331, CP77-332 and CP77-270, but not the application pending in Docket CP77-269. UGP has requested to withdraw its Section 7 application in Docket CP77-271, and United LNG has requested to withdraw its Section 7 application in Docket CP77-272.