

Cited as "1 ERA Para. 70,529"

Border Gas, Inc. (ERA Docket No. 81-23-NG), April 21, 1981.

DOE/ERA Opinion and Order No. 31

Opinion and Order Authorizing Payment of an Increased Order Price
for Natural Gas Imported from Mexico

[Opinion and Order]

Summary

The Economic Regulatory Administration (ERA) amends Opinion and Order No. 16A to authorize Border Gas, Inc. (Border) to pay Petroleos Mexicanos (Pemex) effective April 1, 1981, the higher of U.S. \$4.94 per million British thermal units (MMBtu) or the price pursuant to the contract price adjustment provision for natural gas previously authorized to be imported from Mexico. 1/ We find that the continuation of these Mexican imports at the new price is not inconsistent with the public interest in that the price is within the competitive range of prices for alternate fuels in the United States.2/

I. Background

On May 15, 1980, ERA issued Opinion and Order No. 16A, authorizing Border to pay U.S. \$4.47 per MMBtu for natural gas purchased from Pemex for importation into the U.S. Subsequently, on June 9, 1980, the ERA amended that order to authorize Border to pay the higher of U.S. \$4.47 per MMBtu or the price determined pursuant to the escalation clause in Border's contract with Pemex. 3/ This authorization was based on the finding that the proposed price of U.S. \$4.47 per MMBtu was competitive with the costs of alternate fuels and consistent with the Canadian border price in effect at that time.

On January 16, 1981, Border notified ERA that for the period from January 1, 1981, through March 31, 1981, the price derived from the escalation formula in its contract with Pemex was U.S. \$4.826 per MMBtu and it would pay that price to Pemex.4/

On January 15, 1981, the Government of Canada announced a border price of U.S. \$4.94 per MMBtu for natural gas exported to the United States, effective April 1, 1981. In Opinion and Order No. 29, issued on March 27, 1981, the ERA authorized U.S. importers to pay that price for Canadian natural gas.

Subsequently, in a letter dated March 16, 1981, Pemex informed Border that, on April 1, 1981, the price payable under their contract "shall rise to U.S. \$4.94/MMBtu." Consequently, on March 26, 1981, Border filed a "petition to amend authorization" with the ERA requesting that it be authorized to pay the higher of U.S. \$4.94 per MMBtu or their contract price with Pemex for natural gas purchased from Pemex, effective April 1, 1981. Border stated that because the proposed border price is competitive with alternate fuels, authorization by ERA would not be inconsistent with the public interest. Border also requested that, as requested by Pemex in its letter to Border on March 16, 1981, ERA authorize Border to pay, effective April 1, 1981, the higher of the price determined in accordance with its natural gas purchase contract with Pemex or the Canadian border price as authorized by ERA as that price may be adjusted from time to time and approved by ERA.

II. Intervention and Comments

ERA published a notice of the instant application in the Federal Register and solicited protests, comments, petitions to intervene and notices of intervention. 5/ No protests or notices of intervention were received. Petitions to intervene were timely filed by Northern Natural Gas Company, Division of InterNorth, Inc. (Northern Natural), and jointly by the Process Gas Consumers Group (PGC) and the American Iron and Steel Institute (AISI). Intervention is granted to both petitioners.

Northern Natural did not comment on the application. PGC and AISI stated that they did not oppose the price increase sought by Border or the request of Border to tie the price ceiling for Mexican imports to future price increases authorized for Canadian imports. PGC and AISI did

"urge ERA to recognize in any order approving Border's application that if it does review and alter or reverse its policy on the incremental pricing of Canadian imports, that it may be appropriate subsequently to reexamine the present practice of incrementally pricing Mexican imports."

Neither petitioner requests a hearing on the application.

III. Discussion

ERA's basic responsibility in considering this application is to determine pursuant to Section 3 mf the Natural Gas Act whether the continuation of this natural gas import at the proposed unit price is not inconsistent with the public interest. In its application, Border has requested that it be authorized to pay a unit price of U.S. \$4.94 per MMBtu

for natural gas purchased from Pemex, or the contract price, whichever is higher, effective April 1, 1981. Border also requests that in the future it be authorized automatically and permanently to pay a unit price which is the higher of that authorized by ERA for natural gas imports from Canada as that price may be changed by ERA from time to time, or the price derived from the pricing formula in its gas purchase contract.

In Opinion No. 29, ERA found that the Canadian border price for natural gas exported to the U.S. of U.S. \$4.94 per MMBtu effective on April 1, 1981, was reasonable. That finding was based on a comparison of the border price with the range of prices for alternate fuels in major U.S. markets. That comparison is also applicable to this docket and will not be reiterated here.^{6/} We have said previously that: "[u]niformity in the border prices for Canadian and Mexican pipeline gas is a desirable foreign policy objective provided it results in a price to U.S. consumers which is competitive with alternate fuel."^{7/}

We also find that authorizing an effective date of April 1, 1981, is not inconsistent with the public interest. ERA is again applying the "filed rate doctrine," which provides that a border price can be made effective following the date on which the request was filed. ^{8/} Since Border filed its petition to amend authorization on March 26, 1981, we will allow the rate approved here to be made effective April 1, 1981. This approval will permit Border to comply with the terms of its gas purchase contracts with Pemex.^{9/} With regard to Border's request for authorization to pay a unit price equal to any future Canadian border price approved by ERA whenever that price exceeds the unit price derived from its gas purchase contract formula, we find that, at this time, it is not appropriate to adopt this position. We have made this finding because no one can predict with any certainty that the mechanism now used by the Canadian government to derive its border price will continue unchanged in the future. As we have noted in various proceedings affecting natural gas imports from Canada, we anticipate government-to-government discussions between the U.S. and Canada on a wide variety of issues, including the border price and its derivation.

It would be premature for us to assume that the Canadian border price mechanism will be the same as it is today. Accordingly, if we were to grant Border's request at this time, and a totally different Canadian border price structure were to be adopted, the impact on Border and Border's customers could differ significantly from that which might now be predicted. We believe that it is inappropriate for us to relinquish the timely review of changes in the Mexican border price when they exceed the authorized contract price. This finding is made without prejudice to the right of Border to seek from time to

time parity with the Canadian border price whenever that price exceeds Border's authorized contract price with Pemex.

IV. Conclusion

We conclude that approval of the proposed price of \$4.94 per MMBtu, effective as of April 1, 1981, is not inconsistent with the public interest. Nothing in the record before us challenges our previous findings on the need for this import at the proposed price. We also conclude that authorizing an automatic pass-through of future price increases for Border based on possible increases in the Canadian gas price is not warranted at this time.

Order

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

A. Pursuant to authority under Section 3 of the Natural Gas Act, authorization is granted to Border Gas, Inc. to import previously authorized volumes of natural gas from Mexico at the higher of (1) U.S. \$4.94 per MMBtu, or (2) the price derived from the escalation formula contained in Clause Sixteen of the Purchase Contract between Petroleos Mexicanos and Border Gas, Inc., dated October 19, 1979, as approved in Opinion and Order No. 12. This authorization is effective April 1, 1981, and is subject to all other conditions in outstanding orders to Border Gas, Inc. authorizing the importation of Mexican natural gas.

B. The petitions for leave to intervene of those persons set forth in the Appendix are hereby granted, subject to such rules of practice and procedure as may be in effect, provided that participation of intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions for leave to intervene and that the admission of such intervenors shall not be construed as recognition by ERA that they might be aggrieved because of any order issued by ERA in these proceedings.

Issued in Washington, D.C. on April 21, 1981.

--Footnotes--

1/ DOE/ERA Opinion and Order No. 16A, (Opinion No. 16A) issued on May 15, 1980 in ERA Docket No. 79-31-NG, Border Gas, Inc., (1 ERA Para. 70,511 Federal Energy Guidelines).

2/ DOE/ERA Opinion and Order No. 29, (Opinion No. 09) issued on March 27, 1981 in ERA Docket Nos. 81-09-NG et al. Pacific Gas Transmission Company, et al.

3/ Supplemental Order to DOE/ERA Opinion and Order No. 16A, issued on June 19, 1980, in ERA Docket No. 70-31-NG, Border Gas, Inc.

4/ Based on crude oil prices published by Platt's Oilgram Price Service, Vol 59, No. 65, April 6, 1981, the price derived from the escalation formula appears to be unchanged for the second quarter starting April 1, 1981.

5/ Notice of Application to Amend Natural Gas Import Authorization issued April 2, 1981, 46 FR 20587, April 6, 1981.

6/ Opinion No. 29 mimeo at 5.

7/ Opinion No. 16A, 1 ERA at 72,080.

8/ See Opinion No. 16A, 1 ERA at 72,081.

9/ See Clause Twenty-third, Contract of Purchase and Sale of Natural Gas between Pemex and Border dated October 19, 1979 as filed in ERA Docket No. 70-31-NG, Border Gas, Inc.