Cited as "1 ERA Para. 70,533"

El Paso Natural Gas Company (ERA Docket No. 78-15-NG), June 29, 1981

DOE/ERA Opinion and Order No. 18E

Order Amending Authorization to Export Natural Gas to Mexico

[Opinion and Order]

Background

On March 23, 1981, El Paso Natural Gas Company (El Paso) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DME) to amend DOE/ERA Opinion and Order Nos. 18, et seq. (Order No. 18).1/ Order No. 18, as amended, conditionally authorized El Paso to export natural gas to Compania Minera de Cananea S.A. de C.V. (Compania Minera), a firm located in Mexico.2/ In its petition El Paso requests that its export authorization be amended to effect two changes; first the substitution of Petroleos Mexicanos (Pemex) for Compania Minera as the Mexican importer of the gas 3/ and, second, to permit El Paso to retain certain rate surcharges contained in its sales contract with Pemex rather than credit these to its FERC Account Number 191.

The Gas Sales Contract dated February 26, 1981, between El Paso and Pemex is for a primary term commencing when all regulatory approvals have been obtained and extending through December 31, 1982, and thereafter from month to month. Pemex intends to resell the gas to Compania Minera under terms and conditions to be decided between them.

The Gas Sales Contract permits El Paso to charge Pemex a "rate per Mcf equivalent to the rate concurrently collected from time to time under Rate Schedule B-1 of Seller's FERC Gas Tariff" plus a surcharge equal to \$0.275 per Mcf through December 31, 1981, and \$0.300 per Mcf from January 1, 1982, through December 31, 1982.4/ After December 31, 1982, the amount of the surcharge is to be determined by El Paso and Pemex. In addition, the contract price incorporates a second surcharge normally collected from time to time by El Paso from its east of California customers having Priority 1 and 2 requirements (including Compania Minera) attributable to "various load equation arrangements and storage operations intended to protect such requirements." The amount of the surcharge would be computed in accordance with provisions in effect as part of El Paso's FERC Gas Tariff or successor tariff. These surcharges are, according to El Paso's petition, "consistent with pricing provisions El Paso is presently implementing by negotiation as the opportunity arises in its other non-jurisdictional sales agreements on its interstate system."

El Paso states that it is not requesting amendment of the export pricing provision in Order No. 18. El Paso intends to charge Pemex a price equivalent to that paid for imports of Mexican gas, as required by Order No. 18. The revised contract provisions, according to El Paso, "are intended to affect the crediting requirement set forth in Ordering Paragraph 2(b)" of Order No. 18. That provision orders El Paso to credit the difference between the export price ordered by ERA and the effective rate under its Tariff B-1 to its FERC Account Number 191.5/ El Paso asks that the language in Ordering Paragraph 2(b) be amended to permit inclusion of the surcharges in the subtrahend when calculating the difference in revenues thereby permitting El Paso to retain the revenues generated by the surcharges rather than crediting them to FERC Account Number 191.

Intervention and Comments

ERA published notice of receipt of El Paso's application in the Federal Register and invited protests, comments, petitions to intervene and notices of intervention.6/ Timely petitions to intervene have been filed by Compania Minera and Southern California Gas Company (SoCal Gas). Intervention is granted to both petitioners. No person protested or opposed the application, and no notices of intervention were received. Compania Minera supports El Paso's application and requests a hearing only if ERA denies or substantially conditions approval of the application. SoCal Gas, although not taking a position on the application, initially requested a hearing on the issues in the case. Subsequently, SoCal Gas withdrew its motion for hearing while otherwise maintaining its petition to intervene.7/

Decision

Upon review of El Paso's petition to amend Order No. 18, we have determined that the amendments requested by El Paso are not inconsistent with the public interest and should be granted. The substitution of Pemex for Compania Minera has come about, according to El Paso, in order to continue exportation of the gas under conditions satisfactory to all parties. We stated in Order No. 18 that "[i]f necessary to mitigate an adverse price impact on Compania Minera and its customers, the parties are encouraged to negotiate other pricing arrangements. . . ." By substituting Pemex for Compania Minera, the Mexican authorities will have the opportunity to decide, as a domestic matter, whether or not to mitigate the price impact on Compania Minera caused by the newly authorized export price of U.S. natural gas sold to Pemex. Therefore, approval of the substitution of Pemex for Compania Minera is fully consistent with our previous order.

El Paso also requests that subparagraph 2(b) of the ordering section in Order No. 18 be amended to permit El Paso to retain the surcharges provided for in Article IX of the new gas sales contract rather than credit them to FERC Account Number 191. Paragraph 2(b) of Order No. 18 requires that:

> (b) El Paso credit its Federal Energy Regulatory Commission Account Number 191 monthly with the amount of the difference between the revenues attributable to the volumes sold at the export price and the revenues attributable to those same volumes at the price under its rate under Rate Schedule B-1, effective at that time.

El Paso suggests that ordering Paragraph 2(b) be amended to read as follows:

> (b) El Paso credit its Federal Energy Regulatory Commission Account Number 191 monthly the amount of the difference between the revenues attributable to the volumes sold at the export price and the revenues attributable to those same volumes pursuant to Article IX, "Rate", of El Paso's Gas Sale Contract with Pemex, dated February 26, 1981.

After reviewing the record in this docket, we find that amendment of ordering paragraph 2(b) is warranted.8/ In Order No. 18, ERA intended only that the portion of the mandated export price which was in excess of the rate usually charged by El Paso to its non-jurisdictional domestic customers under similar sales contracts be credited to FERC Account Number 191. As long as the surcharges in Article IX of the sales contract between Pemex and El Paso are consistent with the pricing provisions of El Paso's other non-jurisdictional sales agreements, we see no reason why the amendment requested by El Paso should not be approved.

We note that the surcharge specified in section 9.1(ii) in Article IX is a fixed amount only through December 31, 1982. Since it affects the amount credited to El Paso's Account Number 191, any change in the surcharge rates after that date should be reviewed by ERA. Accordingly, we have required El Paso to notify ERA of any changes in the surcharges specified in Article IX of the Pemex/El Paso contract.

Order

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

A. Pursuant to Section 3 of the Natural Gas Act, the authorization issued to the El Paso Natural Gas Company in DOE/ERA Opinion and Order No. 18, authorizing the export of natural gas to Mexico, is hereby amended to change the name of the Mexican importer from "Compania Minera of Cananea, Sonora, Mexico," to "Petroleos Mexicanos." All references to Compania Minera in ordering paragraphs (1) and (2) of DOE/ERA Opinion and Order No. 18 shall be changed to read "Petroleos Mexicanos."

B. Pursuant to Section 3 of the Natural Gas Act, Ordering Paragraph 2(b) of DOE/ERA Opinion and Order No. 18 shall be amended to read as follows: (b) El Paso credit its Federal Energy Regulatory Commission Account Number 191 monthly with the amount of the difference between the revenues attributable to the volumes sold at the authorized export price and the revenues attributable to those same volumes at the price charged pursuant to Article IX of its Gas Sales Contract with Petroleos Mexicanos dated February 26, 1981.

C. Pursuant to Section 3 of the Natural Gas Act, El Paso is hereby ordered to notify ERA of any renegotiation of or changes to amounts of the rates and surcharges specified in Article IX of its Gas Sales Contract with Petroleos Mexicanos and to submit copies of any amendments or other changes to that contract.

D. The petitions for leave to intervene, as 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 the 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 interveners shall not be construed as recognition by ERA that they might be aggrieved because of any order issued by ERA in this proceeding.

Issued in Washington, D.C., June 29, 1981.

--Footnotes--

1/ Five Opinions and Orders have been issued in ERA Docket No. 78-15-NG, El Paso Natural Gas Company. Opinion and Order No. 18 was issued on August 21, 1980 (1 ERA Para. 70,513 Federal Energy Guidelines), Opinion and Order No. 18A issued on September 4, 1980 (1 ERA Para. 70,514 Federal Energy Guidelines), Opinion and Order No. 18B issued on September 19, 1980 (1 ERA Para. 70,515 Federal Energy Guidelines), Opinion and Order No. 18C issued October 7, 1980 (1 ERA Para. 70,516 Federal Energy Guidelines), and Opinion and Order No. 18D issued on October 17, 1980 (1 ERA Para. 70,517 Federal Energy Guidelines).

2/ Order No. 18 required that El Paso receive from Compania Minera the price authorized by ERA to be paid for natural gas imported from Mexico (currently $4.94 per MMBtu) and that El Paso credit to its Federal Energy Regulatory Commission (FERC) Account Number 191 the amount of the difference between the revenues attributable to the volumes sold at the export price and the revenues attributable to those same volumes at the price under its Rate Schedule B-1.

3/ Pemex is the Mexican National Petroleum Company.

4/ The currently effective rate under Rate Schedule B-1 is 232.40 cents per Mcf.

5/ El Paso filed an application for rehearing of this condition on September 9, 1980. ERA has not yet issued a final order on the issue. By its current petition, El Paso states that it does not withdraw its position in its September application.

6/ 46 FR 22026 (April 15, 1981).

7/ In its petition to intervene, SoCal Gas indicated that it has not had an opportunity to review El Paso's application and was unable "to fairly evaluate the impact of the subject request." SoCal Gas then requested "a hearing wherein all aspects of the petition may be evaluated." On May 13, 1981, ERA received a Notice of Partial withdrawal from SoCal Gas. In its notice, SoCal withdrew its motion for hearing, with "the understanding that El Paso will continue to credit to FERC Account 191 the difference between the rate set forth under Article IX of the new contract and the actual amount charged to and paid by Petroleos Mexicano [sic] (Pemex) for the subject exported natural gas."

8/ In Order No. 18, we noted that the then current price of $2.358 per Mcf charged to Compania Minera was comprised of the FERC Tariff B-1 rate of $2.1682 per Mcf and a Purchase Gas Cost Adjustment Surcharge of $.01836 per Mcf. The inclusion by ERA of that surcharge in the amount to be credited to FERC Account Number 191 was inadvertent. Further, El Paso stated in its December 21, 1978 application that Compania Minera had agreed to pay an additional surcharge amount equivalent to that specified in Section 9.2 of the El Paso/Pemex contract before us.

Appendix

El Paso Natural Gas Company
ERA Docket No. 78-15-NG

Applicant	Represented by
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