

Cited as "1 ERA Para. 70,538"

El Paso Natural Gas Company (ERA Docket No. 78-15-NG), January 25, 1982

DOE/ERA Opinion and Order No. 18F

Order Accepting Joint Offer of Settlement and Amending Authorization
Granted in DOE/ERA Opinion and Order No. 18

[Opinion and Order]

I. Background

On August 21, 1980, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued DOE/ERA Opinion and Order No. 18 (Order No. 18),^{1/} authorizing, with conditions, the export of natural gas by El Paso Natural Gas Company (El Paso) to Compania Minera de Cananea, S.A. de C.V. (Compania Minera). We conditioned our approval of the export so that El Paso would charge Compania Minera the same price paid for natural gas imported into the United States from Mexico. We further conditioned our approval so that El Paso would credit the additional revenues received as a result of the higher price to its FERC Account No. 191 for distribution to its ratepayers. El Paso and Compania Minera filed motions to stay the effective date of the conditions set forth in Order No. 18, and ERA granted three extensions of time, ultimately delaying effectiveness of the conditions until October 19, 1980.^{2/}

On September 9 and September 18, 1980, respectively, El Paso and Compania Minera filed applications for rehearing. Compania Minera challenged the condition in Order No. 18 requiring that El Paso export gas to Mexico at the same price that Mexican gas is imported into the United States. El Paso objected not to the price increase, but to the further condition requiring it to pass on the revenues from the price increase to its domestic customers. El Paso's petition for rehearing was granted for the purpose of further consideration in DOE/ERA Opinion and Order No. 18C.^{3/}

Compania Minera's petition for rehearing was denied in DOE/ERA Opinion and Order No. 18D (Order No. 18D).^{4/} Subsequently, Compania Minera sought judicial review of Order No. 18 and Order No. 18D. On March 0, 1981, the United States Court of Appeals for the District of Columbia Circuit remanded the case to ERA for "appropriate proceedings" consistent with the applicable rules.^{5/} The court left Order 18D in effect. On July 9, 1981, ERA held a prehearing conference at which the parties were requested to express their views on the further proceedings necessary to implement the decision of the

court. At that conference, Compania Minera and El Paso agreed to submit a settlement proposal.

On June 29, 1981, we issued DOE/ERA Opinion and Order No. 18E (Order No. 18E),⁶ further amending our previous authorizations by substituting Petroleos Mexicanos (Pemex), the Mexican state petroleum company and sole exporter of gas from Mexico, for Compania Minera as importer of the gas. Pemex has not petitioned to intervene in this proceeding.

II. Joint Offer Of Settlement

On December 18, 1981, El Paso and Compania Minera filed with ERA a "Joint Offer of Settlement," pursuant to 18 C.F.R. Sec. 1.18(e)(1). The offer would settle all issues in this proceeding. In particular, El Paso and Compania Minera propose the following:

Price Condition

1. The price condition adopted in Order No. 18 shall be put into effect as of June 1, 1981.
2. The amounts already collected by El Paso pursuant to the price condition in Order No. 18 for deliveries prior to June 1, 1981, shall be refunded to Compania Minera.

Revenue Crediting Condition

1. El Paso shall file with the FERC for authorization to pass through to its customers, by crediting its FERC Account No. 191, all revenues resulting from the price condition, to the extent that they exceed the applicable rate in the applicable contracts.
2. El Paso shall notify the ERA of any amendment to Article IX of the Gas Sales Contract with Pemex dated February 26, 1981, and shall submit to the ERA copies of any such amendment. In the event the total price that would otherwise be applicable under Article IX of this contract is increased as a result of such amendment, approval of this Joint Offer of Settlement shall not preclude the ERA from taking such action as it then deems appropriate and shall be without prejudice to any position that El Paso may assert with respect to such further action by the ERA.
3. Ordering Paragraph 2(b) of Order No. 18, as amended in Order No. 18E, shall be deleted.

4. El Paso's petition for rehearing in this docket shall be deemed withdrawn.

5. El Paso's undertaking to flow through revenues to its customers as described above is not a concession or acknowledgement that ERA possesses the authority to direct El Paso to do so, and El Paso retains its right to contest ERA's authority so to direct in any subsequent order.

III. Comments

Compania Minera's counsel, in a letter to the ERA dated December 18, 1981, states that he "is authorized to state that the remaining party to this proceeding, Southern California Gas Company, has reviewed the terms of the settlement, . . . and has no objection thereto." Therefore, the offer of settlement is uncontested.

IV. Decision

We have reviewed the uncontested Joint Offer of Settlement submitted by El Paso and Compania Minera and find it to be fair and reasonable and in the public interest. The first result of the settlement would be to delay the imposition of the higher export price from October 19, 1980, to June 1, 1981. In accepting the settlement proposal, we are preserving the principle of export parity pricing. Only the effective date of the applicability of the principle has been adjusted. The public interest will benefit from prompt resolution of this matter without further litigation.

We also take note of the statement by El Paso and Compania Minera that the export pricing policy has not yet been applied to other exports. Settlement of this proceeding clears the way for us to apply the export parity pricing policy to other currently authorized exporters, who are already on notice in pending show cause cases ^{7/} that we are considering adoption of the export parity pricing policy in their cases.

Another result of the settlement offered by El Paso and Compania Minera would be that, although El Paso would continue to credit the additional revenues to its FERC Account No. 191 for distribution to its ratepayers, it would do so voluntarily, rather than as the result of our order. When we issued Order No. 18, we ordered El Paso to credit its FERC Account No. 191 with the additional revenues to ensure that the benefits derived are credited to El Paso's domestic customers.^{8/} We chose the Account No. 191 mechanism because it was a method already in use by the FERC for similar situations and thus it would be unnecessary to create a new mechanism. Therefore, it would

be consistent with our objective of revenue crediting if El Paso were to credit voluntarily the additional revenues to its FERC Account No. 191.

ERA's acceptance of this settlement proposal does not constitute agreement with all the statements and opinions contained in the Joint Offer of Settlement. In particular, ERA does not accept the statements on page 5 regarding the validity of the parity pricing policy and ERA's authority to require El Paso to credit revenues to FERC Account No. 191.

In sum, we feel that acceptance of this settlement will be consistent with the public interest because it preserves our export pricing policy and will allow us to move forward in applying this policy consistently and equitably to all pipeline exports of natural gas. Our acceptance of the settlement further preserves our policy that El Paso's ratepayers should receive the benefit of any additional revenues flowing to El Paso as a result of the higher export price.

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, as amended by DOE/ERA Opinion and Orders No. 18A, 18B and 18C, authorizing the export of natural gas to Mexico, is hereby further amended to change the date in ordering paragraph 1 from "October 18, 1980," to "May 31, 1981."

B. In ordering paragraph 2 of DOE/ERA Opinion and Order No. 18, as amended by DOE/ERA Opinion and Orders No. 18A, 18B and 18C, the effective date of the conditions, "October 19, 1980," is hereby further amended to read "June 1, 1981."

C. Upon the condition that El Paso voluntarily perform the undertakings set forth in Part II-B of the Joint Offer of Settlement submitted on December 18, 1981, in this proceeding, ordering paragraph 2(b) of DOE/ERA Opinion and Order No. 18, as amended by DOE/ERA Opinion and Order No. 18E, is deleted.

D. The Application for Rehearing filed by the El Paso Natural Gas Company in this proceeding on September 9, 1980, shall be deemed withdrawn.

E. The ERA's approval of this settlement shall not constitute approval of or precedent regarding any principle or issue in this proceeding.

Issued in Washington, D.C., January 25, 1982.

--Footnotes--

1/ DOE/ERA Opinion and Order No. 18, issued August 21, 1980, in ERA Docket No. 78-15-NG, El Paso Natural Gas Company (1 ERA Para. 70,513 Federal Energy Guidelines).

2/ See, e.g., DOE/ERA Opinion and Order No. 18A, issued September 4, 1980 (1 ERA Para. 70,514 Federal Energy Guidelines), DOE/ERA Opinion and Order No. 18B, issued September 19, 1980 (1 ERA Para. 70,515 Federal Energy Guidelines), DOE/ERA Opinion and Order No. 18C, issued October 7, 1980 (1 ERA Para. 70,516 Federal Energy Guidelines), and DOE/ERA Opinion and Order No. 18D, issued October 17, 1980 (1 ERA Para. 70,517 Federal Energy Guidelines).

3/ Ibid.

4/ Ibid.

5/ *Compania Minera de Cananea, S.A. v. Department of Energy, Economic Regulatory Administration*, No. 80-2280 (D.C. Cir., March 2, 1981).

6/ DOE/ERA Opinion and Order No. 18E, issued June 29, 1981, in ERA Docket No. 78-15-NG, El Paso Natural Gas Company.

7/ See, *Order to Show Cause Why the Natural Gas Export Authorization of Del Norte Natural Gas Company Should Not Be Amended*, issued November 18, 1980, in ERA Docket No. 80-19-NG, Del Norte Natural Gas Company; *Order to Show Cause Why the Natural Gas Export Authorization of Montana Power Company Should Not Be Amended*, issued November 18, 1980, in ERA Docket No. 80-20-NG, Montana Power Company; *Order to Show Cause Why the Natural Gas Export Authorization of Entex, Inc. Should Not Be Amended*, issued November 18, 1980, in ERA Docket No. 80-21-NG, Entex, Incorporated; *Order to Show Cause Why the Natural Gas Export Authorization of Valero Transmission Company Should Not Be Amended*, issued November 20, 1980, in ERA Docket No. 81-01-NG, Valero Transmission Company.

8/ See, Order No. 18 at p. 5.