

Cited as "1 ERA Para. 70,547"

Entex, Incorporated (ERA Docket No. 80-21-NG), April 28, 1982

DOE/ERA Opinion and Order No. 42

Order Suspending Order to Show Cause

I. Background

On November 18, 1980, the Economic Regulatory Administration (ERA) of the Department of Energy issued in this docket an "Order to Show Cause Why the Natural Gas Export Authorization of Entex, Inc. Should Not Be Amended." In that order, we asked Entex, Incorporated (Entex), which exports natural gas to Mexico, to show cause why its export authorization should not be amended to make it consistent with the export parity pricing and revenue crediting policies established by the ERA in ERA Docket No. 78-15-NG in DOE/ERA Opinion and Order No. 18 (Order 18), issued August 21, 1980, 1 ERA paragraph 70,513. In Order 18, we found that exports of natural gas from the United States would be authorized only at a price "no less than and no more than the effective price authorized at that time by the .. ." ERA for natural gas imported from that same country (export parity pricing), and we conditioned the export accordingly. We also conditioned that export to ensure that the revenues derived from the price increase be credited to the exporter's domestic customers (revenue crediting).^{1/}

Entex responded on December 24, 1980, that it is no longer exporting natural gas to Compania de Gas de Nuevo Laredo SA (CGNL).

Entex stated that its export of gas to CGNL has been and continues to be a subject of controversy before the federal courts. Beginning in 1974, Entex stated CGNL was steadily delinquent in making payment for purchases.

In May of 1976, Entex notified CGNL that, consistent with the suspension-for-nonpayment provision in the contract, service to CGNL would be suspended after June 30, 1976, until such time as the account was made current. Subsequently, CGNL filed a complaint in the United States District Court in Laredo, Texas, alleging overpayment by CGNL under the contract. Entex then counterclaimed for the amount past due on CGNL. These proceedings are not yet completed.

Entex continued its gas deliveries to Mexico, through a series of monthly agreements with the Secretary of Industry and Commerce of the Republic

of Mexico, until May 1977. Since mid-1977, the respective valves on each side of the international boundary have been closed as a safety precaution. Thus, according to Entex, although the contractual commitment to export gas to Nuevo Laredo still exists, no deliveries have been made in nearly five years.

Based on these facts, Entex asks that our show cause order be dismissed and that the proposed amendment of its export authorization be held in abeyance until such time as the pending lawsuit is finally concluded and the customer requests resumption of deliveries. Entex states in its December 04, 1980, filing (at pp. 6-7):

"Such resolution avoids the problem of speculating as to the impact of any such pricing condition, maintains the status quo pending trial in the district court and does no violence to the policy underlying the ERA's proposed action for the simple reason that no deliveries presently are being made. Entex hereby agrees, as a condition precedent to any resumption of deliveries under the export authorization, to provide reasonable advance written notice to the ERA of any such proposed resumption so that the ERA, should it desire to do so, may again propose to take whatever action it may deem appropriate with respect to the price to be charged by Entex and the crediting of "excess" revenues. At that time, Entex will be in a position to apprise the ERA of the actual impact of any such condition, to request a hearing with respect to certain issues, to suggest appropriate modifications, or to argue in opposition based upon fact and law."

II. Intervenors and Comments

On November 26, 1980, we issued a "Notice of Orders to Show Cause" in this docket, inter alia (45 FR 80165, December 3, 1980), inviting protests or petitions to intervene in this proceeding. We received no petitions to intervene or protests.

III. Decision

We have reviewed Entex's answer to our show cause order and conclude that, as long as no export sales are being made, at any price, the conditions proposed in our Order to Show Cause would have no practical effect on Entex's authorization. Because of this situation, we are unable to make a final decision at this time as to whether the price charged by Entex is not inconsistent with the public interest. Therefore, pursuant to Entex's request, we are suspending our consideration of our show cause order until such time as Entex resumes exporting under its contract with CGNL. Entex has agreed, "as a

condition precedent to any resumption of deliveries under the export authorization," to provide reasonable notice to ERA of any resumption. Accordingly, should Entex propose to resume the export, our order provides Entex will have to come before us again with a written notice. We would, at that time, examine the proposed export price and other terms to determine whether they are consistent with the export parity and revenue crediting pricing policies.

Order

For the reasons set forth above, ERA hereby orders that the "Order to Show Cause Why the Natural Gas Export Authorization of Entex, Inc. Should Not Be Amended," issued November 18, 1980, be suspended, and ERA orders further that, no less than 60 days prior to the resumption of natural gas exports by Entex to Compania de Gas de Nuevo Laredo SA, Entex shall provide written notice of this resumption, which notice shall include the full terms of the resumption, including the export price.

Issued in Washington, D.C. on April 28, 1982.

--Footnote--

1/ The conditions imposed in Order 18 were challenged by Compania Minera S.A. de C.V., the Mexican importer (for the parity price condition), and El Paso Natural Gas Company, the U.S. exporter (for the revenue crediting condition). On January 25, 1982, we issued DOE/ERA Opinion and Order No. 18F (Order 18F) in ERA Docket No. 78-15-NG, 1 ERA Para. 70,538, Federal Energy Guidelines, accepting a joint offer of settlement made by the parties. Order 18F left the basic policies of export parity pricing and revenue crediting intact.