

Cited as "1 ERA Para. 70,119"

Trunkline LNG Company (ERA Docket Nos. 82-12-LNG and 83-04-LNG),
March 7, 1984.

DOE/ERA Opinion and Order No. 50A

Order Terminating Consolidated Proceeding

I. Background

In 1977, the Federal Power Commission (FPC) authorized Trunkline LNG Company (TLC) to import from Algeria approximately 165 Bcf of liquefied natural gas (LNG) annually for a period of twenty years.^{1/} Deliveries of LNG began in September 1982. Upon announcement of TLC's intention to accept initial deliveries, numerous complaints, petitions and protests were filed with the Administrator of the Economic Regulatory Administration (ERA) requesting suspension, revocation or rescission of TLC's import authorization. The petitioners and complainants maintained that there was no longer a need for this supply, the price was no longer reasonable and the supply was not reliable. The ERA commenced a proceeding to investigate these matters. On February 25, 1983, the Administrator issued a decision denying petitions to suspend, rescind or revoke the authorization, but deferring a decision on the issue of price and giving the contracting parties six months to renegotiate their contract.^{2/}

On July 25, 1983, TLC filed with the ERA an amendment to its authorization reflecting proposed new pricing, volume, and related provisions that had been negotiated with Sonatrach, the Algerian LNG supplier. On September 23, 1983, the Administrator issued an order noticing the proposed amendment, reopening the proceeding on the issue of price, consolidating ERA dockets, inviting further intervention,^{3/} and requesting information and comments to supplement the record.^{4/}

On December 20, 1983, TLC filed with the ERA a copy of the Supplement to Special Report No. 7 submitted to the Federal Energy Regulatory Commission (FERC) in accordance with the Commission's order of June 1, 1983.^{5/} This supplement stated that Trunkline Gas Company (Trunkline) could no longer purchase LNG from TLC on the basis that further purchases would threaten the economic viability of Trunkline. TLC accordingly notified Sonatrach and Lachmar, the U.S. shipping company, of an indefinite suspension of further purchases and transportation of LNG effective December 12, 1983. Copies of the notification letters were attached to the supplement. TLC cited certain events and the effect of Trunkline's action as constituting a force majeure, as Trunkline was TLC's sole customer and source of revenue.^{6/} Since TLC's December 20 filing, the company has been in negotiations with Sonatrach

relating to the suspension and future of the import arrangement, with no results reported to date.^{7/}

II. Decision

TLC'S indefinite suspension of LNG imports fundamentally changes the facts and circumstances that were the primary basis of the complaints in this proceeding. TLC has indicated that it will not import further volumes in accordance with the terms of its authorization until such time as the economic conditions in the markets improve to an extent sufficient to make performance possible without exposure to exorbitant loss. Thus, the proceeding on the issue of price and the competitiveness of the LNG that was being imported, based on the record that has been compiled, is moot. In similar fashion, TLC's action also moots the proceeding on the proposed contract amendment submitted last July.

It follows that to continue the proceeding, or to decide the issues in the proceeding based upon a record that is now dated, would be a theoretical exercise serving no useful purpose. At best, a determination made on the pending issues utilizing the record of this proceeding would constitute a hypothetical and advisory opinion. This would not serve the public interest.

It is therefore concluded that all the complaints, protests and petitions filed in this proceeding, and TLC's application to amend its import authorization, should be dismissed without prejudice to resubmission in the event that changes to the present circumstances make such action appropriate.

In view of TLC's present discussions with Sonatrach, the prospect exists of a revised import arrangement between the parties. If this occurred, TLC would be required to file appropriate amendments to its import authorization. Such amendments would be subject to the normal authorization proceedings of this agency, which permit third party participation. These proceedings would be conducted in a manner consistent with the gas import policy guidelines and delegation of authority issued by the Secretary of Energy on February 15, 1984, and any proposed amendments filed by TLC would be subject to the considerations set forth therein.^{8/}

Although TLC has stated that the present suspension will be indefinite, it is not precluded from resuming LNG imports under its existing authorization. In the event shipments are resumed, parties to this proceeding should have advance notice of such action and the opportunity to raise issues that again may be considered relevant. Consequently, if shipments are to be resumed, TLC is required to give the Administrator 90 days' advance notice of such action. Public notice would then be given in order to provide interested persons the opportunity to raise relevant issues.

III. Order

Pursuant to Section 3 of the Natural Gas Act, it is hereby ordered that:

1. All petitions for leave to intervene are hereby granted, subject to such rules of practice and procedure as may be in effect.
2. All complaints and petitions in this proceeding are hereby dismissed without prejudice.
3. Trunkline LNG Company's application to amend its import authorization is dismissed without prejudice.
4. Trunkline LNG Company shall notify the Administrator of the ERA in writing no less than ninety (90) days in advance of any resumption of LNG shipments authorized under FPC Opinion Nos. 796 and 796-A.
5. This proceeding is terminated.

Issued in Washington, D.C. on March 7, 1984.

--Footnotes--

1/ Opinion No. 796 issued April 29, 1977 (58 FPC 726), and Opinion No. 796-A issued June 30, 1977 (58 FPC 2935).

2/ See DOE/ERA Opinion and Order No. 50, issued February 25, 1983 (1 ERA Para. 70,116, Federal Energy Guidelines).

3/ In response to the September 23 order, there were seven new petitions to intervene from National Distillers and Chemical Corporation, Kokomo Gas and Fuel Company, Consolidated System LNG Company, Diamond Shamrock Exploration Company, The Canadian Imperial Bank of Commerce, Morgan Stanley & Co. Inc., Mobil Oil Exploration & Producing Southeast Inc.

4/ See DOE/ERA Order issued September 23, 1983 (1 ERA Para. 70,118, Federal Energy Guidelines).

5/ Docket No. CP74-139-000.

6/ Further elaboration of the conditions and reasons for TLC's suspension of LNG purchases can be found in its January 10, 1984 filing to supplement its October 31, 1983 response to the September 23, 1983 ERA order, and the January 11, 1984 filing of Special Report No. 8, submitted in accordance with the FERC order of June 1, 1983 (CP74-139-000).

7/ Special Report Lo. 9 filed by TLC on February 7, 1984, in accordance with the FERC's order of June 1, 1983.

8/ "New Policy Guidelines and Delegation Orders from Secretary of Energy to Economic Regulatory Administration and Federal Energy Regulatory Commission Relating to the Regulation of Imported Natural Gas," 49 FR 6684 (February 22, 1984).