

Cited as "1 ERA Para. 70,602"

The U.S. Natural Gas Clearinghouse, Ltd. (ERA Docket No. 85-06-NG), July 5, 1985.

## DOE/ERA Opinion and Order No. 86

Order Granting Authorization to Import Canadian Natural Gas for Short-Term and Spot Markets

### I. Background

On February 27, 1985, The U.S. Natural Gas Clearinghouse, Ltd. (Clearinghouse) filed with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act, an application for blanket authorization to import Canadian natural gas for short-term, spot sales.<sup>1/</sup> The applicant requested blanket authority to import up to 1 Bcf of natural gas per day (up to a total of 1.46 Tcf over the entire term) for a term of four years beginning on the date of approval of its application. The applicant proposes to import gas from reliable Canadian producers pursuant to subsequently negotiated, individual short-term sales contracts without each being subjected to a specific ERA regulatory proceeding. The applicant requests authority to import for its own account as well as for the accounts of its Canadian producer/marketer clients and U.S. purchaser clients, acting as agent for sellers and purchasers.

### II. Procedural History

On March 11, 1985, the ERA issued a notice of the application, inviting protests, motions to intervene and written comments by April 15, 1985.<sup>2/</sup> Seventeen motions and notices to intervene were received by the ERA.<sup>3/</sup> Three parties, ANR Pipeline Company (ANR), Mesa Petroleum Co. (Mesa), and Railroad Commission of Texas (RCT), protested the application. Four parties, ANR, Mesa, RCT, and Panhandle Eastern Pipe Line Company (Panhandle), requested additional procedures. Seven parties, ANR, Mesa, RCT, Niagara Mohawk Power Corporation (Niagara Mohawk), Pacific Gas Transmission Company (PGT), Panhandle, and Transcontinental Gas Pipe Line Corporation (Transco), made substantive comments.

ANR proposed that the ERA deny Clearinghouse's blanket authorization and require Clearinghouse to apply for specific authority for each proposed transaction. ANR requested full evidentiary hearings if the application is not denied. In addition, ANR suggested that if broad range, blanket or generic

authorizations of spot imports are to be considered, a general rulemaking proceeding should be utilized.

Mesa protested the application because its approval would confer upon Clearinghouse the right to sell its Section 3 authorization. Mesa contended that such a brokering of Section 3 entitlements is impermissible under the statute and such fees paid in the brokering should not be a legitimate utility expense collectible in the cost of service of the purchasing customers. In the event that the ERA determines not to reject the Clearinghouse application, Mesa also requested that the ERA hold an evidentiary hearing.

The RCT protested the application and requested further procedures because it believed the Clearinghouse application provided insufficient information to enable it to be determined to be in the public interest, as required by Section 3 of the Natural Gas Act.

Niagara Mohawk expressed concern that the information provided in the Clearinghouse application was too vague to support an evaluation. Niagara Mohawk also noted the substantial quantity of gas Clearinghouse sought to import and suggested that the ERA should consider the current excess deliverability of domestic gas which is causing market disorders.

PGT was concerned that the proposed after-the-fact periodic reporting to the ERA of individual transactions by Clearinghouse was not, by itself, an appropriate safeguard to assure protection of the interests of all gas consumers in the markets affected, particularly to ensure that such blanket imports do not adversely affect long-term gas supplies. PGT, noting the volume and term restrictions of the Canadian policy on spot market sales,<sup>4/</sup> asked that the ERA consider limiting the term of the proposed project to two years and authorizing lesser volumes.

Panhandle stated that the Clearinghouse application does not present any of the concrete details or facts necessary for proper evaluation by participants or the ERA, and sought prior notice requirements for each particular transaction under any blanket authorization. Panhandle requested additional procedures to determine the details of potential Clearinghouse transactions, the compliance of such transactions with the DOE's policy guidelines, the impact of such transactions on existing long-term projects for importation of Canadian gas, and the procedural requirements necessary to make spot market imports consistent with the Natural Gas Act.

Transco expressed concern that the points of entry for requested imports were not identified in the application. To prevent the possibility that

volumes of gas imported under the requested authorization would compete for available pipeline capacity, Transco suggested that any order issued in this docket be conditioned by assigning a lower priority for the transportation of short-term, interruptible imports than for firm import volumes through any point of entry facilities. Transco offered as an alternative to the Clearinghouse application a proposal for a generic blanket import program available to all that desire to import Canadian natural gas on a short-term or spot basis.

On May 13, 1985, after a review of the information in the record, the ERA issued a procedural order to all parties providing opportunity for comments on its proposal to limit approval of the applicant's blanket authorization to a term of two years and to a maximum volume of 730 Bcf during the two-year term, consistent with recent orders granting other blanket authorizations.<sup>5/</sup> The order required comments to be filed and served on all parties by June 10, 1985, and responses to be filed and served by June 25, 1985. The order requested that the parties review the proposed restrictions on the term and volumes to be imported under this blanket arrangement and their earlier comments on the application. If any opposition to the restricted proposal continued, the order required the parties to restate that opposition in order for it to be taken into consideration in the final decision. The order provided that previously filed comments could be incorporated by reference and thus restated in any additional comments.

Only the applicant and four intervenors, RCT, Mesa, Panhandle, and Niagara Mohawk, submitted additional comments. No new issues were raised by the intervenors in their comments to the procedural order, nor did the intervenors making additional comments change their position from their previous comments on the application. The four intervenors stated that the modification of the import proposed by the ERA does not cure the lack of specific information needed to fully evaluate the application.

In its response, Clearinghouse stated that it did not oppose the ERA's decision to limit its blanket authorization to a period of two years. Clearinghouse requested that the ERA grant the authorization on the grounds that the proposed imports will clearly be competitive--asserting that if a particular spot sale of Canadian gas is priced too high, the markets will either continue buying from their current supplier or will buy from a Clearinghouse competitor offering lower-priced gas. Clearinghouse also responded that the intervenors' comments provided no basis for distinguishing its proposed import arrangement from the import arrangement approved by the ERA in *Tenngasco*,<sup>6/</sup> in terms of flexibility granted and the ability to act as agent or principal in a particular situation.

### III. Decision

The application filed by Clearinghouse has been evaluated in accordance with the Administrator's authority to determine if the proposed import arrangement meets the public interest requirements of Section 3 of the Natural Gas Act. Under Section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest."<sup>7/</sup> The Administrator is guided by the DME's natural gas import policy guidelines.<sup>8/</sup> Under these guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

The parties intervening in this case raised a number of issues related to the competitiveness of the proposed import. However, most of those issues relate to concerns that imports made under the blanket authorization will be too competitive rather than not competitive in the market served.

Niagara Mohawk, both in its original intervention and, by reference, in its comments in response to the procedural order, expressed concern that the ERA should evaluate whether the requested import authorization can be justified given the current excess of domestic deliverability of gas and the present market disorder. Niagara Mohawk contended that the ERA must consider the prevention of further market disruptions potentially caused by short-term, interruptible sales skimming the large industrial customers from present suppliers.

Niagara Mohawk's concern over justification for the new import authorization in a time of excess domestic deliverability gives the impression it wants to insulate its market from potential competition. Such concern may be normal for a supplier faced with the loss of customers. However, the DOE strongly supports the establishment of a spot market, and the competition such short-term, spot sales bring to the marketplace.<sup>9/</sup> The addition of spot sales to a surplus market places downward pressure on prices and encourages pipelines and distributors to continue to renegotiate their arrangements to make them more competitive and market-responsive.

Mesa contended that the proposed import would give Clearinghouse the right to sell its Section 3 authorization and that such a brokering of Section 3 entitlements is impermissible under the Natural Gas Act. Mesa argues that approval of the proposed import would be an impermissible delegation of authority to Clearinghouse, which, acting as an agent, would determine which transactions meet the public interest standard of Section 3.

The ERA, in granting authorizations which permit importers to act as agents, has not delegated any Section 1 authority. Rather, the ERA has determined that a finding of public interest does not rely on whether title to the gas has been taken. The nature of the proposed transaction must be evaluated. Here, as in Tenngasco, the nature of spot sales arrangements--that each spot sale is voluntarily negotiated, short-term, and generally executed on an interruptible, best-efforts basis--provides assurance that such transactions will be consistent with the policy guidelines and in the public interest. Whether Clearinghouse takes title to the imported gas is a contract term not material to this consideration. As stated in the policy guidelines, "[t]he market, not government, should determine the price and other contract terms of imported gas." 10/

Niagara Mohawk, Mesa, RCT, and Panhandle expressed concern that there is not sufficient information on individual transactions in the application to ascertain that they are not inconsistent with the public interest. Spot market sales are quick, short-term transactions designed to adapt gas sales to changing market conditions. The series of spot sales transactions proposed by Clearinghouse can be evaluated and found to be in the public interest without knowing the precise terms of each sale, inasmuch as each sale is freely negotiated and would only take place if the gas was marketable, competitively priced, and needed. It is not essential to know in advance the terms of each sale as long as the parameters of each sale are known. Establishment of a quarterly reporting requirement and limitation of the authorization to two years provide sufficient safeguards of the public interest in this type of arrangement.

Accordingly, the motions for further proceedings, including evidentiary hearings, to determine the details of specific proposed transactions in this proposed import are denied.

Panhandle and PGT, in its initial comments, expressed similar concerns. Both requested the ERA to consider what impacts short-term proposals have on the maintenance of competitive terms for long-term, firm supplies of Canadian gas in the markets which would be affected. Both requested the ERA to provide safeguards to assure protection of the interests of all gas consumers in the markets affected and not just the interests of a particular short-term buyer. Finally, both expressed concerns that the proposed quarterly report to be submitted by the applicants does not reserve to the ERA the ability to determine that the import policy guidelines will be satisfied in each import transaction.

The ERA made a decision on the concerns raised by Panhandle and PGT when

it authorized the blanket import arrangements requested by Cabot Energy Supply Corporation, Northwest Alaskan Pipeline Company, Tenngasco Exchange Corporation and LHC Pipeline Company,<sup>11/</sup> and Dome Petroleum Corporation.<sup>12/</sup> In those orders we found there was no need to protect long-term, firm imports against competition from short-term, spot imports. Panhandle and PGT have not submitted any additional evidence or arguments which cause us to change this position. We continue to believe that such arrangements enhance competition in the marketplace and that quarterly reporting requirements adequately safeguard the public interest.

In sum, the ERA finds that the parties opposing the import have failed to raise issues or present evidence which would support a finding that the proposed or modified import arrangement is not competitive, or that would support disapproval of the authorization on other grounds. This modified version of the applicant's request for authorization represents an opportunity to test the use of imported natural gas for short-term, spot imports as a supplemental supply for domestic spot market. Under this blanket import authority, Clearinghouse will be able to import, within fixed parameters, Canadian natural gas for subsequently executed individual short-term sales contracts negotiated in the competitive atmosphere of the domestic spot market. The ERA, through review of the contract sales information submitted by Clearinghouse in its required quarterly reports, will be able to evaluate the impact of the individual transactions on the markets served.

Moreover, the policy guidelines recognize that the need for import is a function of competitiveness. Under the proposed import, Clearinghouse customers will only purchase gas to the extent they need such volumes. The security of the import supply is not a major issue because the gas is to be purchased on a short-term, interruptible basis.

After taking into consideration all the information in the record of this proceeding, I find that granting the blanket authorization to import up to 730 Bcf of Canadian gas over a term of two years for sale in the domestic short-term, spot market is not inconsistent with the public interest.<sup>13/</sup>

#### Order

For reasons set forth above, pursuant to Section 3 of the Natural Gas Act, it is ordered that:

A. The U.S. Natural Gas Clearinghouse, Ltd. (Clearinghouse) is authorized to import up to 730 Bcf of natural gas from Canada for a term of two years beginning on the date of first delivery.

B. Clearinghouse shall notify the ERA in writing of the date of the first delivery of natural gas imported under Ordering Paragraph A above within two weeks after the date of such delivery,

C. With respect to the imports authorized by this Order, Clearinghouse shall file with the ERA in the month following each calendar quarter, quarterly reports indicating, by month, whether sales have been made, and if so, giving the details of each transaction. The report shall include the purchase and sales prices, volumes, any special contract price adjustments, take or make-up provisions, duration of the agreements, ultimate sellers and purchasers, transporters, points of entry, and markets served.

Issued in Washington, D.C., on July 5, 1985.

--Footnotes--

1/ Clearinghouse is a Houston, Texas-based, limited partnership. The Gas Clearinghouse Operating Company is the general partner and the six limited partners are subsidiary corporations of the following natural gas pipelines: Colorado Interstate Gas Company, The Columbia Gas System, Inc., El Paso Natural Gas Company, Houston Natural Gas Corporation, Transco Energy Company, and United Energy Resources, Inc.

2/ 50 FR 10533, March 15, 1985.

3/ Intervenors are:

Algonquin Gas Transmission Company  
ANR Pipeline Company  
CNG Development Company  
CNG Producing Company  
Consolidated Gas Transmission Corporation  
El Paso Natural Gas Company  
Mesa Petroleum Company  
Niagara Mohawk Power Corporation  
Northern Natural Gas Company, Division of InterNorth, Inc.  
Northwest Pipeline Corporation  
Pacific Gas Transmission Company  
Pacific Interstate Transmission Company  
Panhandle Eastern Pipe Line Company  
Public Service Electric and Gas Company  
Railroad Commission of Texas  
Texas Eastern Transmission Corporation

Transcontinental Gas Pipe Line Corporation

4/ National Energy Board (NEB) Regulatory Procedures and Informa-Gas Export Orders (NEB File: 1537-1, dated October 2, 1984). NEB Part VI Regulations permit the Board to issue short-term orders for the export of natural gas up to a total of 106 Bcf for such orders in any 12-month period and a maximum term for any such order not to exceed 24 months commencing on November 1 of any year.

5/ See Cabot Energy Supply Corporation, DOE/ERA Opinion and Order No. 72, issued February 26, 1985 (1 ERA Para. 70,124); Northwest Alaskan Pipeline Company, DOE/ERA Opinion and Order No. 73, issued February 26, 1985 (1 ERA Para. 70,585); Tenngasco Exchange Corporation and LHC Pipeline Company, DOE/ERA Opinion and Order No. 80, issued May 6, 1985.

6/ See supra note 5.

7/ 15 U.S.C. Sec. 717b.

8/ 49 FR 6684, February 22, 1984.

9/ In Increasing Competition in the Natural Gas Market; Second Report Required by Section 123 of the Natural Gas Policy Act of 1978, submitted in January 1985, the DOE observed that an active spot market will allow the natural gas market to allocate risks efficiently and will help minimize price and supply fluctuations as the market moves from a tightly regulated environment towards fully competitive market conditions. See Summary, pp. S-1 and S-5, and Chapter 6, p. 75.

10/ 49 FR 6685, February 22, 1985.

11/ See supra note 5.

12/ DOE/ERA Opinion and Order No. 85, issued July 2, 1985.

13/ Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application clearly is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, et seq.) and therefore an environmental impact statement or environmental assessment is not required.