Cited as "1 ERA Para. 70,605"

Northridge Petroleum Marketing U.S., Inc. (ERA Docket No. 85-14-NG), September 27, 1985.

DOE/ERA Opinion and Order No. 88

Order Granting Blanket Authorization to Import Natural Gas from Canada

I. Background

On July 17, 1985, Northridge Petroleum Marketing U.S., Inc. (Northridge) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act, for blanket authorization to import up to an aggregate of 100 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery. Northridge is a wholly-owned subsidiary of Northridge Petroleum Marketing, Inc., a Canadian corporation engaged in the marketing of crude oil, natural gas and refined petroleum products. Northridge would operate solely as a reseller, buying the gas from its parent company and selling it to various U.S. purchasers in short-term, direct sales. The purchasers are expected to include end users, local distribution companies and pipelines in Midwestern and mid-Atlantic regions of the United States. Northridge expects that its short-term sales generally will be used to displace higher-priced energy supplies.

Northridge states that the specific terms of each sale will be negotiated on an individual basis, thereby ensuring the market competitiveness of each import arrangement. No agreement between Northridge and its purchasers under the requested authorization will exceed two years in duration. Northridge proposes to file with the ERA, within forty days following each calendar quarter, a summary of all market sales it has made.

The applicant intends to use existing transmission systems and does not require the construction of new or separate facilities in order to import the gas. Northridge requests authority to use any existing pipeline facilities at the United States-Canada border to deliver the imported volumes.

II. Interventions and Comments

The ERA issued a notice of the application on July 25, 1985, inviting motions to intervene, notices of intervention or comments to be filed by September 3, 1985.1/ The Northern Indiana Public Service Company filed a

notice of intervention and Northern Natural Gas Company, Division of InterNorth, Inc. and Michigan Consolidated Gas Company filed motions to intervene but none expressed an opinion on the merits of the application. The Panhandle Producers and Royalty Owners Association (PPROA) opposed the application in its motion to intervene. Representative Beau Boulter of Texas furnished comments also opposing the application but did not expressly intervene or otherwise request to become a party to this proceeding. This order grants intervention to all movants.

In their statements objecting to the authorization, PPROA, representing the interests of producers, royalty owners and service companies in Texas, New Mexico, Oklahoma and Kansas, and Representative Boulter both take the position that (1) Northridge failed to present specific information needed by the ERA to adequately evaluate the national need for additional Canadian gas supplies; (2) approval of the import would give Northridge the right to sell its Section 3 authorization, an impermissible delegation of authority under the Natural Gas Act, and enable it to collect an impermissible brokerage fee; (3) the application should be denied because Northridge is a newly-created company and ERA lacks an "informational base" concerning Northridge's operations. PPROA requests that the ERA hold a trial-type hearing if the application is not summarily rejected. PPROA raises the following as issues of material fact which it contends must be addressed in a trial-type hearing before the ERA can grant the requested authorization: (1) whether blanket importation authorizations are inconsistent with the national security objectives that Section 3 of the Natural Gas Act is designed to protect; (2) the identity of Northridge's prospective suppliers and purchasers and security of those supplies; (3) whether the proposed importation serves the needs of specific gas markets; and (4) whether the proposed importation price is consistent with the public interest and whether that price includes any brokering fees.

Northridge filed an answer in opposition to PPROA's comments and request for a trial-type hearing. In its response, Northridge contends that PPROA's concern over the lack of justification for the new import is an attempt to exclude competitively-priced Canadian gas from the domestic market in the face of excess deliverability and falling prices. In addition, Northridge claims that PPROA's criticism of the application's specificity is without merit since the ERA has already granted authorizations to import gas based on applications containing information and terms not materially different nor more detailed than the applicant's. Northridge also asserts that, contrary to the statements made by PPROA, it does not intend to act as broker. Furthermore, Northridge maintains that it is not a start-up company without adequate foundation for the ERA to process its application because the ERA has on three previous occasions authorized Northridge's parent company to market Canadian gas to

direct purchasers in the U.S. on a short-term basis.

III. Decision

The application filed by Northridge 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." 2/ The Administrator is guided in this determination by the DOE's natural gas import policy guidelines.3/ 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 opposing the proposed import raise a number mf issues, both as a basis for challenging the project's consistency with the public interest and as a basis for PPROA's request for a trial-type hearing.

The PPROA and Representative Boulter express concern that there is not sufficient justification for the new import and not sufficient information provided about each individual import transaction to determine if all proposed sales are in the public interest. However, the ERA has found such blanket import arrangements to be in the public interest without knowing the precise terms of each sale, inasmuch as each sale would be freely negotiated and would only take place if the gas was marketable, competitively-priced, and needed.4/ As noted in prior decisions in proceedings on similar blanket import arrangements it is not essential to know in advance the precise terms of such arrangements as long as certain broad parameters of each sale are known. Those opposing the application in this case have presented no new evidence or arguments that would serve as a basis to alter that position. Establishment of a quarterly reporting requirement adequately safeguards the public interest in this type of arrangement.

The PPROA and Representative Boulter claim that if the proposal is granted, it would confer upon Northridge the right to sell its Section 3 authorization. They contend 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 customer. PPROA also maintains that approving the proposed import would be an impermissible delegation of authority to Northridge because as an agent Northridge would determine which transactions meet the public interest standard of Section 3.

We note first, that based on the application and subsequent statements made by Northridge in its response to PPROA's allegations, that Northridge intends to import the gas on its own behalf for direct sale to U.S. purchasers and does not propose to act as an agent on behalf of sellers or purchasers. Moreover, the ERA does not believe these considerations are relevant in the circumstances of this case. In an earlier order authorizing a blanket arrangement which involved broker-type transactions, the ERA stated, "[t]he ERA has not delegated any Section 3 authority when it grants authorizations which permit importers to act as agents. Rather, the ERA has determined that a finding of public interest does not rely on whether title to the gas has been taken." 5/

The PPROA and Representative Boulter contend that we should deny all start-up companies blanket import authority because they have not established previously with the ERA some informational base as to their operations. In criticizing the ERA's lack of experience with and lack of information about Northridge, PPROA cites a Federal Energy Regulatory Commission preamble to its regulation restricting grants of blanket certificates and abandonment authorizations to natural gas companies under Section 7 of the Natural Gas Act in the absence of prior findings and filings.6/ However, the ERA has no intention of limiting competition by denying newly-created companies access to import authorizations. The establishment of such an informational base with the ERA is not required by our rules, nor is it a relevant issue in deciding whether to approve import authorizations. On this point, 10 CFR 590.202(c) requires the applicant to show that the proposed import of natural gas is within the corporate powers of the applicant. Northridge has fully satisfied this requirement.

The PPROA also questions the need for the import and the security of the import supply. The policy guidelines recognize that the need for an import is a function of competitiveness. Under the proposed import, Northridge's customers will only purchase gas to the extent they need such volumes. Further, in prior decisions, the ERA has taken the position that the security of the import supply is not a major issue when the imported gas is to be sold to purchasers on a short-term basis.7/

The ERA has carefully reviewed PPROA's request for a trial-type hearing and decided it should be denied because PPROA has failed to identify, in accordance with the ERA's procedural rules, material and relevant factual issues genuinely in dispute and that such a hearing is necessary for the ERA to make a decision on this application. The purported issues of disputed fact regarding the need for the import in a changing U.S. market, the reliability of the import supply under short-term blanket arrangements, and the ERA's

ability to determine that spot market sales under a blanket authorization are in the public interest are each issues of policy or law that have already been decided by the ERA in other similar blanket import authorizations.8/

The DOE strongly supports the establishment of a spot market, and the competition such short-term, spot sales bring to the marketplace.9/ Under this blanket import authority, Northridge 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 Northridge in its required quarterly reports, will be able to evaluate the impact of the individual transactions on the markets served.

After taking into consideration all the information in the record of this proceeding, I find that granting Northridge blanket authority to import up to 100 Bcf of Canadian natural gas over a term of two years for sale in the domestic short-term, spot market is not inconsistent with the public interest.10/

Order

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

A. Northridge Petroleum Marketing U.Q., Inc. (Northridge) is authorized to import a maximum of 100 Bcf of natural gas from Canada over a two-year period beginning on the date of first delivery.

B. This natural gas may be imported at any point on the international border where existing pipeline facilities are located.

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

D. With respect to the imports authorized by this Order, Northridge 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 price, volumes, any special contract price adjustments, take or make-up provisions, duration of the agreements, ultimate purchasers, transporters, points of entry, and markets served.

E. The motions to intervene as set forth in this Opinion and Order, are hereby granted, subject to the administrative procedures in 10 CFR Part 590, provided that participation of the intervenors shall be limited to matters specifically set forth in their motions to intervene and not herein specifically denied, and that the admission of such intervenors shall not be construed as recognition that they might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., on September 25, 1985.

--Footnotes--

1/ 50 FR 31220, August 1, 1985.

2/ 15 U.S.C. Sec. 717b.

3/ 49 FR 6684, February 22, 1984.

4/ See Cabot Energy Supply Corporation, 1 ERA Para. 70,124 (February 26, 1985); Northwest Alaskan Pipeline Company, 1 ERA Para. 70,585 (February 26, 1985); Tenngasco Exchange Corporation and LHC Pipeline Company 1 ERA Para. 70,596 (May 6, 1985); Dome Petroleum Corporation, 1 ERA Para. 70,601 (July 2, 1985); and U.S. Natural Gas Clearinghouse, Ltd., 1 ERA Para. 70,602 (July 5, 1985).

5/ See U.S. Natural Gas Clearinghouse, Ltd., 1 ERA Para. 70,602 at 72,421.

6/ Comments and Petition to Intervene of Panhandle Producers Royalty Owners Association, September 3, 1985, at 3.

7/ See e.g., Cascade Natural Gas Corporation, 1 ERA Para. 70,578 (December 10, 1984); Southwest Gas Corporation, 1 ERA Para. 70,581 (December 18, 1984); and Northwest Alaskan Pipeline Company, supra; Cabot Energy Supply Corporation, supra; Tengasco Exchange Corporation and LHC Pipeline Company, supra and The U.S. Natural Gas Clearinghouse, Ltd., supra.

8/ See note 4, supra.

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 dully competitive market conditions. See Summary, pp. S-1 and S-5, and Chapter 6, p. 75.

10/ 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.