Cited as "1 ERA Para. 70,612"

Salmon Resources, Ltd. (ERA Docket No. 85-18-NG), December 16, 1985

DOE/ERA Opinion and Order No. 94

Order Granting Blanket Authorization to Import Natural Gas from Canada

I. Background

On September 20, 1985, Salmon Resources, Ltd. (Salmon) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act (NGA), 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. Salmon is a wholly-owned subsidiary of Shell Canada Resources Limited, a Canadian corporation engaged in the production and marketing of crude oil and natural gas. Salmon would operate solely as a reseller, buying the gas from its parent company and from other individual producers, producer groups, associations, and pipeline companies who sell natural gas in Canada. Salmon would sell the gas directly to various U.S. purchasers on a short-term basis. The purchasers are expected to include, but not be limited to, industrial end-users, electric utilities, pipelines, and distribution companies. Salmon expects that its short-term sales generally will be used to displace higher-priced energy supplies.

Salmon states that the specific terms of each sale would be the result of negotiations between it and U.S. purchasers, and would be responsive to current market conditions for natural gas. The terms of each supply contract would include the price paid to the supplier, the volume, the duration of the agreement, and, where applicable, contract adjustment and take provisions. Salmon proposes to file with the ERA, within 40 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. Salmon 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 October 2, 1985, inviting motions to intervene, notices of intervention, or comments to be filed by

November 12, 1985.1/ Northern Natural Gas Company, a Division of Internorth, Inc., Pacific Gas Transmission Company, and Transcontinental Gas Pipe Line Corporation filed motions to intervene but did not express an opinion on the merits of the application. The Panhandle Producers and Royalty Owners Association, et al.,2/ (PPROA) filed a motion to intervene and opposed the application. PPROA also requested a trial-type hearing. On November 27, 1985, Salmon filed an answer to PPROA's motion. This order grants intervention to all movants.

III. Decision

The application filed by Salmon 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 NGA. Under Section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest." 3/ The Administrator is guided in this determination by the DOE's natural gas import policy guidelines.4/ Under these guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

PPROA, representing the interests of producers, royalty owners and service companies in Texas, New Mexico, Oklahoma and Kansas, opposes the proposed import because (1) Salmon failed to present specific information needed by the ERA to adequately evaluate the national need for additional Canadian gas supplies; and (2) the ERA should not rely upon the DOE's policy guidelines in making a decision on this application because the guidelines are a statement of policy rather than a substantive rule under the Administrative Procedure Act. 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 import authorizations are inconsistent with the national security objectives that Section 3 of the NGA is designed to protect; (2) the identity of Salmon'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 import price is consistent with the public interest.

The ERA has carefully reviewed PPROA's request for a trial-type hearing and decided it should be denied. PPROA has failed to identify, in accordance with the ERA's procedural rules, material and relevant factual issues genuinely in dispute and has failed to demonstrate that such a hearing is necessary for the ERA to make a decision on this application. The purported disputed issues of material fact regarding national need for additional

Canadian gas supplies, achievement of national security objectives, need of specific markets for the proposed blanket importation. and the consistency of yet-to-be identified import prices with the public interest are issues that have already been addressed by the ERA in other similar blanket import authorizations.5/ PPROA has failed to demonstrate that any facts are in dispute in this case, but instead has only raised discretionary policy issues which the ERA has already decided and PPROA also has failed to provide any evidence which would cause the ERA to change its position.

The ERA has determined that in this case, as in the case of all blanket authorizations, the gas will be taken only if it is needed and the price is competitive.6/ PPROA has presented no evidence to the contrary. Thus PPROA's arguments concerning need are not sustained. PPROA's concerns regarding national security objectives are obscure. If PPROA is reaching to the security of supply issue, the ERA has determined, in this as well as in other blanket and short-term authorizations, that security of supply is not an issue in short-term, best-effort types of arrangements.7/

As Salmon noted in its answer to PPROA regarding the lack of advance detail of the terms of each transaction, the ERA has determined that blanket authorizations are in the public interest. The DOE strongly supports the establishment of a spot market, and the competition such short-term, spot sales bring to the marketplace.8/ Under this blanket import authority, Salmon 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 Salmon in its required quarterly reports, will be able to evaluate the impact of the individual transactions on the markets served.

PPROA contends that the policy guidelines do not have the effect of a substantive DOE rule, which can be issued only pursuant to a rulemaking proceeding. The ERA agrees, as does Salmon in its answer to PPROA. Formulated in large part on the basis of public comments,9/ the policy statement instead serves as a discretionary guide and advance notice to the public of the manner in which the Department has decided to exercise its responsibility under Section 3 of the NGA to maintain the public interest in international gas trade. The policy reflects a belief that "competitive import arrangements are an essential element of the public interest," 10/ and that the parties to commercial arrangements, if permitted to negotiate free of government constraints, will structure competitive arrangements which will be market-responsive over their term. It provides a general framework for the ERA in approaching its statutory responsibilities, which ultimately are resolved

in each case, as in this case, on the specific record and on precedents involving similar cases, not on any application of the policy as a rule.

After taking into consideration all the information in the record of this proceeding, I find that granting Salmon 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.11/

Order

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

A. Salmon Resources, Ltd. (Salmon) 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. Salmon 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, Salmon 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 for each transaction the purchase and sales price, volumes, any special contract price adjustments, take or makeup provisions, duration of the agreements, ultimate purchasers, transporters, points of entry, and markets served.

E. The request for a trial-type hearing made by Panhandle Producers and Royalty Owners Association, et al., is hereby denied.

F. 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 December 16, 1985.

--Footnotes--

1/ 50 FR 41560, October 11, 1985.

2/ PPROA includes the Panhandle Producers and Royalty Owners Association, the West Central Texas Oil and Gas Association, the North Texas Oil and Gas Association and the East Texas Producers and Royalty Owners Association.

3/ 15 U.S.C. Sec. 717b.

4/ 49 FR 6684, February 22, 1984.

5/ 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 Corp. and LHC Pipeline Company, 1 ERA Para. 70,596 (May 6, 1985); Dome Petroleum Corporation, 1 ERA Para. 70,601, (July 2, 1985); U.S. Natural Gas Clearinghouse, Ltd., 1 ERA Para. 70,602 (July 5, 1985); Northridge Petroleum Marketing U.S., Inc., 1 ERA Para. 70,605 (September 27, 1985); Westcoast Resources, Inc., 1 ERA Para. 70,606 (September 27, 1985).

6/ Id.

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); Cabot Energy Supply Corporation, supra, note 5; U.S. Natural Gas Clearinghouse, Ltd., supra, note 5.

8/ 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, at S-1, S-5, and Chapter 6, at 75.

9/ Public participation in the DOE's gas import policy review undertaken in 1983 came primarily through two conferences held in January and September. See 47 FR 57756, December 28, 1982, and 48 FR 34501, July 29, 1983.

10/ 49 FR 6687.

11/ 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.Q.C. 4321, et seq.) and therefore an environmental impact statement or environmental assessment is not required.