

Cited as "1 ERA Para. 70,616"

CPEX Pacific, Inc. (ERA Docket No. 85-26-NG), December 20, 1985.

DOE/ERA Opinion and Order No. 98

Order Granting Authorization To Import Natural Gas From Canada

### I. Background

On October 16, 1985, CPEX Pacific, Inc. (CPEX) 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 on an interruptible, best-efforts basis, up to 10,000 Mcf per day of Canadian natural gas. The gas would be purchased from Czar Resources Limited (Czar) pursuant to a gas purchase contract dated August 29, 1985. Czar is a Canadian corporation operating natural gas wells in the vicinity of Fort St. John, British Columbia.

The imported gas would be used as process fuel and feedstock at a plant near St. Helens, Oregon, formerly owned by Reichhold Chemicals, Inc. (Reichhold), which produces anhydrous ammonia, urea, and other fertilizer products. CPEX purchased the plant from Reichhold in April 1985. The plant is currently being served with gas purchased under a contract dated July 16, 1984, between CPEX, as successor to Reichhold, and Czar. The importation of natural gas under that contract was approved by the ERA on September 14, 1984, in DOE/ERA Opinion and Order No. 60.1/ According to CPEX, the approval sought by this application would supersede the ERA's approval of the earlier contract.

Under the new contract, CPEX would purchase up to 10,000 Mcf per day during a 12-month period, beginning on the date of first delivery to coincide with the December 22, 1985, expiration date of the original authorization. Following the initial 12-month term, the arrangement is to continue on a month-to-month basis until terminated by either party or until a maximum of 3.4 Bcf has been delivered, whichever occurs first. There is no minimum purchase obligation or take-or-pay requirement, but CPEX has agreed to use Czar gas to meet its St. Helens plant requirements to the extent Czar is able to deliver requested volumes. Because of increasing competition in the natural gas industry, the parties have renegotiated the initial price of the gas under the contract. The price of the gas at the point of importation will be \$2.25 (U.S.) per MMBtu. It is subject to renegotiation at any time by either party giving the other 30-day notice.

The imported volumes would enter the U.S. at a point near Sumas, Washington, by means of existing pipeline facilities of Northwest Pipeline Corporation (Northwest). Northwest would then transport the gas to the distribution facilities of Northwest Natural Gas Company which would complete ultimate delivery to CPEX's plant. CPEX will bear the cost of transporting the gas from the Canadian border.

## II. Interventions and Comments

A notice of CPEX's application was issued on October 31, 1985, inviting protests, comments, and motions to intervene to be filed by December 9, 1985.<sup>2/</sup> A motion to intervene was filed by Northwest Pipeline Corporation supporting the application. A joint motion to intervene was also filed by Panhandle Producers and Royalty Owners Association, et al., representing the Panhandle Producers and Royalty Owners Association, West Central Texas Oil and Gas Association, North Texas Oil and Gas Association and East Texas Producers and Royalty Owners Association (hereafter referred to collectively as PPROA), opposing the application and requesting a trial-type hearing. This order grants intervention to all movants.

## III. Decision

CPEX's application has been evaluated in accordance with the Administration's authority to determine if the proposed import meets the public interest requirement of Section 1 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."<sup>3/</sup> The Administrator is guided in this determination by the DOE's natural gas policy guidelines.<sup>4/</sup> 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 PPROA alleges the contract requires CPEX to purchase all gas required for the St. Helens plant from Czar to the extent Czar is able to deliver such volumes. PPROA contends that this exclusive purchase requirement is not in keeping with the ERA's competitive guidelines since it will prevent domestic producers with available natural gas supplies from competing with Czar for the gas requirements of the plant. PPROA asks the ERA either to deny summarily the CPEX application or to convene a trial-type hearing.

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 10 CFR Section 590.313 of 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 ERA has determined that in this case, as in the case of other short-term, best-efforts imports, the gas will be taken only if it is needed and the price is competitive.<sup>5/</sup> PPROA has presented no evidence to the contrary. Although PPROA is reflecting the legitimate business concern of domestic producers about their ability to market their gas, the solution in the public interest is not to limit competition in the marketplace.

After taking into consideration all information in the record of this proceeding, I find that granting CPEX authority to import up to 10,000 Mcf per day until a maximum of 3.4 Bcf has been delivered is not inconsistent with the public interest.<sup>6/</sup>

### Order

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

A. CPEX Pacific Inc. is authorized to import up to 10,000 Mcf per day and up to a total of 3.4 Bcf of Canadian natural gas beginning on December 23, 1985, consistent with the gas purchase agreement filed as part of the application in this docket.

B. CPEX shall file with the ERA the terms of any renegotiated price that may become effective within two weeks after the time of its effective date.

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

D. The motions to intervene, as set forth in this Opinion and Order, are hereby granted, subject to the administrative procedures in 10 CFR 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., December 20, 1985.

--Footnotes--

1/ Reichhold Chemicals, Inc., 1 ERA Para. 70,570 (September 14, 1984).

2/ 50 FR 46335, November 7, 1985.

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

4/ 49 FR 6684, February 22, 1985.

5/ See e.g. Reichhold Chemicals, Inc., *supra*, note 1; Northwest Natural Gas Company, 1 ERA Para. 70,577 (December 10, 1984); Cascade Natural Gas Corporation, 1 ERA Para. 70,578 (December 10, 1984); Czar Resources Inc., 1 ERA Para. 70,593 (April 24, 1985); Southeastern Michigan Gas Company, 1 ERA Para. 70,595 (April 24, 1985); Czar Resources Inc., 1 ERA Para. 70,598 (June 3, 1985); N-Ren Corporation, 1 ERA Para. 70,599 (June 3, 1985); and Bethlehem Steel Corporation, 1 ERA Para. 70,600 (June 30, 1985).

6/ 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.