

Cited as "1 ERA Para. 70,629"

Northwest Pipeline Corporation (ERA Docket No. 85-20-NG), February 10, 1986.

## DOE/ERA Opinion and Order No. 92A

### Order Denying Rehearing

#### I. Background

On December 10, 1985, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued DOE/ERA Opinion and Order No. 92 (Order No. 92) in ERA Docket No. 85-20-NG. Order No. 92 approves an extension to DOE/ERA Opinion and Order No. 87 (Order No. 87),<sup>1/</sup> issued September 10, 1985, which approved an amendment to the existing authorizations of Northwest Pipeline Corporation (Northwest) to import Canadian natural gas from Westcoast Transmission Company Limited (Westcoast).<sup>2/</sup> Order No. 92 extends the term of Order No. 87 until January 31, 1986.

#### II. Application for Rehearing

On January 9, 1986, the Panhandle Producers and Royalty Owners Association (PPROA) filed an application for rehearing of Order 92. PPROA is an association that represents the interests of royalty owners and service companies in Texas, New Mexico, Oklahoma, and Kansas who are dependent upon gas sales to interstate pipelines.

PPROA argues that the ERA erred in refusing to conduct a trial-type hearing in ERA Docket No. 85-20-NG since it alleges that there were outstanding material issues of disputed fact in the proceeding. Further, PPROA argues that the ERA, through its application of the DOE natural gas import policy guidelines <sup>3/</sup> has improperly shifted the burden of proof from the applicant to the interveners. PPROA claims that the ERA has, in its consideration of ERA Docket No. 85-20-NG, given improper weight to the case record of Order No. 87. Finally, PPROA alleges that the ERA erred by improperly making Order No. 92 retroactive. PPROA also requests that the ERA incorporate by reference its application for rehearing in ERA Docket No. 85-14-NG. PPROA claims that the reasons it set forth in that docket should compel the ERA to hold a trial-type hearing in this proceeding.

#### III. Decision

PPROA argues three bases of error to support its request for rehearing in this proceeding. First, to support its allegation that the ERA erred in not granting a trial-type hearing, PPROA requests incorporation by reference of those reasons stated in its application for rehearing <sup>4/</sup> of DOE/ERA Opinion and Order No. 88.5/ The requested incorporation is denied. PPROA has exhausted its administrative remedies in ERA Docket No. 85-14-NG and it cannot continue to argue that case in other dockets involving different factual circumstances. We would note that since the application in ERA Docket No. 85-14-NG was for a blanket authorization for short-term spot sales and this application is for an amendment to an existing long-term import arrangement, PPROA's arguments are not germane to this case. In any case, to the extent arguments and issues raised in the earlier docket logically could be applied to the different factual setting of this proceeding PPROA presented no evidence of disputed material fact in ERA Docket No. 85-14-NG and presents none in this proceeding to convince us to reconsider our denial of their request for a trial-type hearing.

Second, PPROA claims that the ERA has improperly shifted the burden of proof from the applicant to the interveners. This is not true. Section 3 of the NGA requires that an import be authorized unless "the proposed importation will not be consistent with the public interest." <sup>6/</sup> Thus, the statute establishes a presumption in favor of authorization, but allows the DOE to exercise its discretion in determining the public interest. In exercising this discretion, the DOE identified competition as the cornerstone of this statutory standard.<sup>7/</sup> This approach presumes that gas imported under agreements responsive to market demands meets the public interest test, and that participants, if permitted to negotiate free of government constraints, will enter into competitive import arrangements that will be responsive to market forces over their term. The guidelines direct those participants to inform the DOE if they feel the import is not in the public interest. In addition, the guidelines establish that in cases, such as the present request by Northwest, where an amendment to a currently authorized import arrangement involving flowing gas will bring that arrangement more into conformity with the guidelines, that arrangement will benefit from the presumption that it is in the public interest and opposing parties will bear the burden to rebut the presumption. Thus, the policy guidelines are designed to avoid instability or uncertainty in ongoing natural gas trade and seek to establish a smooth transition to competitive trade arrangements with minimum governmental involvement.

Finally, PPROA alleges that the ERA has given improper weight to Order No. 87 in its consideration of ERA Docket No. 85-20-NG. PPROA maintains that since Order No. 87 only authorized the period from November 1, 1984, to

October 31, 1985, and since ERA Docket No. 85-20-NG considered the period of November 1, 1985, to January 31, 1986, Northwest should be obligated to present its case anew and the ERA should give little weight to the evidence presented for the earlier period. Northwest's existing authorizations allow it to import volumes of gas through 1987 at a price not to exceed \$4.94 per MMBtu. The amendment approved in Order No. 87 made the long-term arrangements more competitive, pursuant to the DOE import policy guidelines, while Northwest continued to renegotiate the entire arrangement. The amendment reduced the volumes, and established a two-part pricing structure that lowered the average price to \$3.40 per MMBtu from \$4.40. The facts as related in Order No. 87 and presented in this proceeding show that the amendment continues to make Northwest's imports more competitive than its existing long-term arrangements. PPROA's arguments were given full and fair consideration and the ERA concluded that PPROA had not presented any evidence in this proceeding to show that those facts have changed or that the amendment is not more competitive. Barring evidence to the contrary, the ERA was compelled to acknowledge that the arrangement was more competitive when Order No. 87 was decided and met the public interest test. It continues to meet the test by keeping the existing arrangements more competitive until January 31, 1986.

As part of the third basis for error argued above, PPROA contends that the ERA exceeded its statutory authority when it allegedly issued Order No. 92 retroactively on December 10, 1985, to authorize Northwest to act under the terms of its amended purchase agreement from November 1, 1985, through January 31, 1986. Order 92 was not issued retroactively. It was effective from the date of issuance, December 10, 1985. Northwest's amendment, which lowers the price of the gas purchased but does not increase the volumes above the levels previously authorized nor extend the term of those previous authorizations, can be implemented without ERA approval. Order No. 92 merely confirmed that authorization from the date of issuance to January 31, 1986.

#### IV. Conclusion

PPROA has failed to show that the ERA was in error when it issued Order No. 92. It has not presented any new matters in its rehearing request that would merit reconsideration of our findings in Order No. 92. Accordingly, this order denies PPROA's request for rehearing.

#### Order

For the reasons set forth above, pursuant to Sections 3 and 19 of the Natural Gas Act, It is ordered that:

(A) Panhandle Producers and Royalty Owners Association's (PPROA) request for a rehearing of DOE/ERA Opinion and Order No. 92 is denied.

(B) PPROA's request that the rehearing application it filed in ERA Docket No. 85-14-NG be incorporated by reference in this docket is denied.

Issued in Washington, D.C., on February 18, 1986.

--Footnotes--

1/ 1 ERA Para. 70,604.

2/ Pacific Gas Transmission Company, et al., 1 ERA Para. 70,528 (March 27, 1981), and Northwest Pipeline Company, 1 ERA Para. 70,537 (December 21, 1981).

3/ 49 FR 6684, February 22, 1984.

4/ Application for Rehearing and Request for Stay by the Panhandle Producers and Royalty Owners Association, October 28, 1985.

5/ Northridge Petroleum Marketing U.S., Inc., 1 ERA Para. 70,605 (September 27, 1985).

6/ 15 U.S.C. Sec. 717(b).

7/ See supra note 3, at Para. 6687.