

Cited as "1 ERA Para. 70,630"

Michigan Consolidated Gas Company (ERA Docket No. 85-27-NG), February 21, 1986.

DOE/ERA Opinion and Order No. 96A

Order Denying Rehearing

I. Background

On December 20, 1985, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued DOE/ERA Opinion and Order No. 96 1/ (Order No. 96) granting Michigan Consolidated Gas Company (MichCon) authorization pursuant to Section 3 of the Natural Gas Act (NGA) to import up to 13,000 Mcf per day of Canadian natural gas during a three-year period beginning on the date of first delivery, pursuant to the provisions of energy exchange agreements with Esso Chemical Canada (Esso) and Shell Western E&P Inc. (Shell). The exchange was arranged to allow Shell to remove ethane from the natural gas it sells to MichCon to eliminate operational problems at MichCon, and to export equivalent Btu's of ethane for use as a primary feedstock for a petrochemical plant operated by Esso at Sarnia, Ontario. Under the arrangement, MichCon incurs no additional costs above what it was paying Shell for gas with the ethane included.

II. Application for Rehearing

The Panhandle Producers and Royalty Owners Association, et al.^{2/} (PPROA) filed an application for rehearing of Order No. 96 on January 21, 1986. 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. 85-27-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 ^{3/} has improperly shifted the burden of proof from the applicant to the interveners. 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 4/ 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. 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 import to effect an energy exchange. We would note that, since MichCon was a customer of Shell prior to the authorized import, remains a customer of Shell, and equivalent Btu's in the form of ethane are exported to Canada, PPROA's arguments are not particularly 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 has presented related to such issues 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." 6/ 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.7/ This approach presumes that the gas imported under agreements responsive to market demands meets the public interest test, and that the parties, if permitted to negotiate free of government constraints, will enter into competitive import arrangements that will meet their needs and will be responsive to market forces over their term. The guidelines and the ERA's administrative procedures direct the interveners to inform the DOE if they think the import is not in the public interest, and to provide evidence to support this position.

Third, PPROA alleges that the ERA has failed to consider the cumulative impact of the application in light of numerous other import authorizations recently granted by the ERA. The ERA has considered that impact. The DOE has determined that freely negotiated, market-responsive arrangements for the purchase of natural gas enhances competition in the marketplace and benefits consumers and the long-term health of the gas industry.

Finally, as part of the preceding argument, PPROA contends that a monetary arrangement rather than an energy exchange is more in the public

interest, and that the ERA should therefore have denied MichCon's application. PPROA apparently desires the ERA to intervene in the day-to-day operations of MichCon, Shell and Esso and define for them how they should conduct their business. The ERA will not do so. The public interest is best upheld by allowing competitive trade relationships to develop with minimal governmental involvement. The fact that MichCon chose to participate in an energy exchange rather than purchase gas from PPROA represents its best assessment of market factors and is not anti-competitive.

IV. Conclusion

The ERA has determined that PPROA's request for rehearing presents no information that would merit reconsideration of our findings in Order No. 96. Therefore, PPROA's request for rehearing is denied.

Order

For the reasons set forth above, pursuant to Section 19(a) of the Natural Gas Act, it is ordered that:

The application of Panhandle Producers and Royalty Owners Association et al. for rehearing of DOE/ERA Opinion and Order No. 96 is hereby denied.

Issued in Washington, D.C., on February 21, 1986.

--Footnotes--

1/ 1 ERA Para. 70,614 (December 20, 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/ 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 6687.