

Cited as "1 ERA Para. 70,638"

El Paso Gas Marketing Company (ERA Docket No. 85-32-NG), March 27, 1986.

DOE/ERA Opinion and Order No. 116

Order Granting Blanket Authorization to Import Natural Gas from Canada

### I. Background

On November 25, 1985, El Paso Gas Marketing Company (El Paso) 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 400,000 Mcf per day of Canadian natural gas for a two-year period beginning on the date of first delivery. The applicant, a wholly-owned subsidiary of El Paso Natural Gas Company (EPNG), is incorporated in the State of Delaware, and has its principal place of business in El Paso, Texas.

El Paso proposes to purchase up to 200,000 Mcf per day of the imported volumes of natural gas from Northridge Petroleum Marketing, Inc. (Northridge), under a sales agreement dated October 29, 1985, and the remaining volumes from Canadian suppliers yet-to-be designated by El Paso. The gas would be resold on a short-term and spot-market basis primarily to customers currently served directly or indirectly by EPNG's interstate transmission system, as well as to other potential interstate spot-market customers.

El Paso states that the agreement with Northridge contains a pricing mechanism designed to establish purchase prices which are competitive with prices paid for domestic gas supplies acquired by El Paso for resale in the spot market. Purchase price levels under the agreement would be established incrementally, on a net-back basis. The purchase price for each increment of imported gas acquired for resale would be established by reference to El Paso's sales price for such volumes, subject to a price floor equal to the higher of the then-effective, applicable border price established for gas exports by the Canadian government, or the then-current lowest published price paid for gas sold by El Paso in spot-market sales delivered at the inlet of EPNG's system, less transportation costs from the points of importation to the EPNG system. El Paso states the agreement with Northridge is intended to be effective for an initial two-year term following the date of first delivery and thereafter automatically renewable for successive two-year terms unless terminated in writing by either party.

El Paso would transact individual arrangements to acquire up to 200,000 Mcf of gas per day in addition to those supplies from Northridge. They would be purchased from reliable gas producers in British Columbia at negotiated prices which would be competitive with domestic suppliers, utilizing net-back pricing formulae comparable to that included in the Northridge agreement.

El Paso asserts that no new pipeline facilities would be required in order to import the gas. The points of importation under the Northridge agreement would be Kingsgate, British Columbia, and Emerson, Manitoba. Transportation for the Northridge volumes would be provided by Pacific Gas Transmission Company and other pipeline facilities to EPNG's system which would complete the ultimate delivery of gas. The point of importation for gas purchased from El Paso's other suppliers would be at the interconnection of facilities owned by Westcoast Transmission Company, Ltd. and Northwest Pipeline Corporation near Sumas, Washington.

The applicant proposes to file quarterly reports with the ERA. Each report would indicate the transactions made during the quarterly period and the details of such transactions, including purchase and sales prices, volumes, duration of the agreements, contract adjustment and take provisions, if any, the supply sources, the U.S. purchasers, and a description of the markets served.

## II. Interventions and Comments

The ERA issued a notice of the application on December 12, 1985, with protests, motions to intervene, or comments to be filed by January 13, 1986.<sup>1/</sup> The ERA received 15 timely motions to intervene and one notice of intervention.<sup>2/</sup> The State of New Mexico (New Mexico) filed a late motion to intervene on January 14, 1986. With regard to the late intervention, no delay to the proceeding or prejudice to any party will result from New Mexico being granted intervention. Accordingly, the late filing is accepted and this order grants all motions to intervene.<sup>3/</sup>

The Independent Petroleum Association of Mountain States (IPAMS), a trade association representing the interests of producers in Arizona, Colorado, New Mexico, North Dakota, South Dakota, Nebraska, Wyoming, Utah, Nevada, Idaho, and Montana opposes El Paso's application because IPAMS alleges the proposed imports are not competitive. IPAMS argues that Rocky Mountain gas producers are selling less than 40 percent of deliverable supplies because they cannot obtain equal transportation access to domestic markets in order to compete with the proposed imports. IPAMS contends that most pipelines, including EPNG, have not adopted open-access transportation under the Federal

Energy Regulatory Commission's (FERC) Order No. 436.4/ IPAMS alleges that El Paso, as an affiliate of EPNG, has access to transportation which will allow Canadian volumes to be immediately offered to current and new markets while precluding domestic producers from participating in these markets. IPAMS states "it fails to see the equity in allowing pipelines, or their affiliates, to import and market Canadian gas, while denying such competitive opportunities to domestic producers."<sup>5</sup>/ IPAMS requests the ERA to summarily deny the application, or in the alternative, grant a stay of ruling until such time as open transportation is available for all domestic gas, or in the alternative set this matter for a trial-type hearing.

Southern Union Company and Southwest Gas Corporation, both customers of EPNG, filed comments in support of the application.

On January 27, 1986, El Paso filed an answer to IPAMS' alternative request for relief. El Paso contends that the ERA should deny the relief requested by IPAMS because, effective January 17, 1986, EPNG became an open-access pipeline under FERC Order No. 436. As such, EPNG is permitted to enter into new transportation arrangements on behalf of local distribution companies and intrastate pipelines on a "first-come, first-serve" basis. El Paso contends that this action by EPNG moots the basis for IPAMS' request that the application be denied, stayed or that the ERA should hold a trial-type hearing.

On January 29, 1986, New Mexico filed supplemental comments to its motion to intervene opposing the application of El Paso. New Mexico had previously not taken a position on the merits of the import proposal. New Mexico is concerned that this import will displace sales of domestic gas to the detriment of domestic producers. It asserts that producers in the State's San Juan Basin are unable to compete for the sales in the spot market due to lack of pipeline access. Thus, New Mexico requests that ERA approval of this import be conditioned on El Paso's willingness to buy San Juan Basin gas on equal terms with Canadian supplies, and on EPNG's agreement to transport it without discrimination. On February 3, 1986, New Mexico filed a request for a trial-type hearing to ventilate its concerns regarding these issues.

On February 7, 1986, El Paso filed an answer to IPANM's comments. El Paso responded to IPANM's concerns that the imported volumes may displace domestic sales and result in harm to domestic producers by stating that it neither intends nor anticipates that the Canadian gas will displace gas that EPNG would otherwise purchase from its presently committed system supply sources. El Paso also states that, to the extent its spot and open-access market demand remains constant, domestic supplies will be displaced only if

they are noncompetitive in the marketplace. Further, El Paso asserts that if pricing parity exists between Canadian supplies and EPNG's released gas available for sale in the spot market, it will make every effort to utilize the released supplies prior to using imported gas. With regard to IPANM's request that ERA condition its authorization upon the implementation of open-access transportation by EPNG, El Paso reiterated its response made to IPAMS that the issue is moot because EPNG is an open-access transporter.

### III. Decision

The application filed by El Paso 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."<sup>6/</sup> The Administrator is guided by the DOE's natural gas import policy guidelines.<sup>7/</sup> Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test.

Parties opposing the import are IPAMS and New Mexico. IPAMS represents domestic natural gas producers and suppliers to EPNG. IPAMS states that its members have additional supplies that could be marketed by El Paso in lieu of Canadian gas. IPAMS expresses concern that spot imports may displace domestic sales, including sales by IPAMS' members, and other domestic producers. Further, IPAMS and New Mexico allege that failure of the pipelines to become open-access transporters under FERC Order No. 436 ensures that domestic producers are and will remain unable to compete with imported gas.

We understand the problems faced by producers and producing states in the Southwest. It is difficult to get through a period of transition to a more competitive market and most of the industry is encountering some difficulty. Competition is essential to the public interest and, as noted in earlier decisions on similar blanket import arrangements,<sup>8/</sup> the DOE strongly supports the establishment of a spot market as a vehicle for bringing more competition to the marketplace.<sup>9/</sup> The development of a spot market in natural gas represents a natural evolution towards a freer market and appropriately enhances the competitive price pressure encouraging producers, pipelines, and distributors to renegotiate old arrangements to respond to a more competitive market. Spot-market sales are quick, short-term transactions that adapt gas sales terms to changing market conditions and that would not be undertaken by buyers if terms were not competitive. The ERA finds spot sales under El Paso's proposed blanket import arrangement to be in the public interest, inasmuch as each sale will be freely negotiated and thus, will only take place if the gas

is marketable, competitively-priced, and needed.<sup>10/</sup>

The El Paso arrangement for the import of Canadian gas, as set forth in the application, is consistent with the DOE policy guidelines. The fact that each spot sale will be voluntarily negotiated, short-term, and market-responsive, as asserted in El Paso's application, provides assurance that the transactions will be competitive. Under the proposed import, El Paso's customers will only purchase gas to the extent they need such volumes and the price is competitive. Thus, this arrangement will enhance competition in the marketplace.

EPNG's recent decision to participate in the FERC Order No. 436 program commits it to providing nondiscriminating transportation. This decision should resolve the issues of preference and availability raised by IPAMS, New Mexico, IPANM, members of Congress, and the New Mexico Legislature. We emphasize that the full effect of this program requires time and it is too soon and would be unfair to speculate about its success at this time. The Department supports the Order 436 program as a means of achieving greater competition in the marketplace and has indicated this support to the FERC.<sup>11/</sup> EPNG's participation in the program should create a more competitive gas market in its market area and is consistent with the desires of the opponents in this proceeding.

The ERA has carefully considered IPAMS', New Mexico's and Senators Domenici's and Bingaman's requests for a trial-type hearing and decided they should be denied. Their requests have failed to identify, in accordance with 10 CFR Sec. 590.313 of the ERA's procedural rules, material and relevant factual issues genuinely in dispute. They focus their arguments on what they perceive as the lack of competition in the market and the potential for El Paso's proposed arrangement to further displace New Mexico gas sales and aggravate an uncompetitive situation. We believe the arrangement will enhance competition and we dispute, not the facts, but the opponents' characterization of the market.

After taking into consideration all the information in the record of this proceeding, I find that granting El Paso blanket authority to import up to 400,000 Mcf per day of Canadian natural gas over a term of two years is not inconsistent with the public interest.<sup>12/</sup>

#### Order

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

A. El Paso Gas Marketing Company (El Paso) is authorized to import up to 400,000 Mcf per day of Canadian natural gas over a two-year period beginning on the date of first delivery.

B. El Paso 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.

C. With respect to the imports authorized by this Order, El Paso shall file with the ERA within 30 days following each calendar quarter, quarterly reports indicating, by month, whether sales of imported gas have been made, and if so, giving the total MMcf of the imports and the average purchase and sales price per MMBtu at the border. The report shall also provide the details of each transaction including the names of the sellers and purchasers, transporters, points of entry, markets served, duration of the agreements, and if applicable, any separate demand/commodity charges, special contract price adjustment clauses, and any take-or-pay or make-up provisions.

D. The motions to intervene, as set forth in this Opinion and Order, are hereby granted, 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 March 27, 1986.

--Footnotes--

1/ 50 FR 50829, December 12, 1985.

2/ The intervenors are: Arizona Public Service Company, Independent Petroleum Association of Mountain States, Northern Natural Gas Company Division of InterNorth, Inc., Pacific Gas Transmission Company, El Paso Natural Gas Company, Valero Interstate Transmission Company, Phelps Dodge Corporation, Salt River Project Agricultural Improvement and Power District, Northwest Pipeline Corporation, Pacific Interstate Transmission Company, Southern Union Gas Company, Southern California Gas Company, Southwest Gas Corporation, Pacific Gas & Electric Company, and Public Utilities Commission of the State of California.

3/ The Independent Petroleum Association of New Mexico (IPANM), Senators Domenici and Bingaman of New Mexico, Senator Laxalt of Nevada, and the New

Mexico Legislature (in the form of a joint resolution) have filed comments, but did not move to intervene. None of these commenters requested additional procedures except Senators Domenici and Bingaman, who requested a public hearing. Pursuant to ERA administrative procedures and as stated in the notice of this application, we will consider such comments for the limited purpose of determining the appropriate procedural action to be taken on El Paso's application.

4/ FERC Order No. 436 (50 FR 42408, October 18, 1985) establishes, among other things, a voluntary self-implementing transportation program conditioned on nondiscriminatory access. The program requires that if a pipeline transports gas on behalf of any third party, it must transport gas for all third parties.

5/ The views of IPANM, Senators Domenici, Laxalt and Bingaman and the New Mexico Legislature are similar to those expressed by the IPAMS. IPANM asserts that the public interest demands that any approval of an import authorization requires, as a condition precedent, that the pipeline affiliate of the importer, in this case EPNG, be an open access, nondiscriminatory transporter and have demonstrated to the FERC's satisfaction that domestic gas sold in direct sale has been and is being transported by the pipeline on a nondiscriminatory basis.

6/ 49 FR 6684, February 22, 1984.

7/ 15 U.S.C. Sec. 717b.

8/ See e.g., 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). Northridge Petroleum Marketing U.S., Inc., 1 ERA Para. 70,605, (September 27, 1985).

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 fully competitive market conditions. See Summary, at S-1, S-5, and Chapter 6, at 75.

10/ See *supra* note 8.

11/ "The Department especially commends the Commission for recognizing the need for a voluntary, nondiscriminatory transportation program as a means of ensuring that all consumers have access to adequate natural gas supplies at reasonable cost. The Department believes Order 436 has the potential to be a major step toward achieving the Commission's goals." Application for Rehearing in Docket No. RM85-1-000, November 8, 1986, at 2-3.

12/ Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application clearly is not a major 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 that an environmental impact statement or an environmental assessment is not required.