

Cited as "1 ERA Para. 70,667"

Hadson Canada, Inc. (ERA Docket No. 86-35-NG), September 9, 1986.

#### DOE/ERA Opinion and Order No. 144

Order Granting Authorization to Import Natural Gas from Canada and to Export Natural Gas to Canada

#### I. Background

On May 23, 1986, Hadson Canada, Inc. (Hadson), 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), requesting blanket authorization to import Canadian natural gas and to export natural gas to Canada for short-term sales in the respective countries' spot market. Hadson seeks authorization to import up to 50 Bcf of Canadian natural gas over a two-year period beginning on the date of first import. Hadson also seeks authorization to export up to 20 Bcf of natural gas over a similar two-year period beginning on the date of first export. Some of the gas that would be exported may be Canadian gas for which import authorization is also being requested.

The applicant, a corporation registered in the State of Oklahoma, is wholly-owned subsidiary of Hadson Gas Systems, Inc., which in turn is a corporation wholly-owned by Hadson Petroleum Corporation, a Delaware corporation. Hadson proposes to import Canadian gas supplied by various suppliers for its own account, or for others, and to resell the gas on the short-term or spot market. Hadson states that it intends to resell the gas on a non-discriminatory basis under market-responsive terms to various purchasers, including local distribution companies, end users, and its parent, Hadson Gas System, Inc., a natural gas gatherer and marketer. Hadson further states that the terms of each arrangement will be negotiated at arms length, including the price, duration, volume, renegotiation and price adjustment provisions, and take-or-pay provisions, if any.

Hadson's proposed export would be structured similar to its import proposal in that Hadson would obtain the gas from various sources either on its own behalf, or as an agent or broker for others, for resale under market-responsive terms pursuant to arrangements negotiated at arms length. In support of its export authorization request, Hadson states that the 20 Bcf of natural gas to be exported is less than the 50 Bcf to be imported so that there would be a net increase in volumes to meet domestic demand. According to

Hadson, assurance that there will be no domestic need for the gas to be exported is provided by the current gas supply surplus in the United States and the short-term, market-responsive nature of the gas sales contracts Hadson would enter into which would permit the market to allocate where the gas is sold based on the law of supply and demand.

In support of its overall import/export authorization request, Hadson asserts that the short-term nature of the authority it is requesting will minimize any domestic reliance on imported gas. Hadson also asserts that the flexibility provided to substitute supplies for import or export under market-responsive terms will promote competition in the natural gas marketplace.

The applicant proposes to file quarterly reports with the ERA of both imports and exports consummated under the authority requested. Each report will provide the details of each transaction which occurred in the preceding quarter, including sales prices, volumes, special contract price adjustments, duration of the contract, ultimate sellers and purchasers, transporters, delivery points and markets served. Hadson anticipates that transportation of both imports and exports of gas will utilize existing facilities.

## II. Interventions and Comments

The ERA issued a notice of the application on June 25, 1986, inviting protests, motions to intervene, or comments to be filed by August 1, 1986.<sup>1/</sup> Motions to intervene, without comment or request for additional procedures, were received from Pacific Gas Transmission Company, Northwest Alaskan Pipeline Company, El Paso Natural Gas Company, and Northwest Pipeline Corporation. Western Gas Marketing Limited (WGML), a wholly-owned marketing subsidiary of TransCanada PipeLines Limited, filed a motion to intervene in opposition to the export portion of Hadson's application on the grounds that it would reduce competition in U.S. gas markets and requested an evidentiary hearing to quantify the adverse impact of the proposed export on U.S. consumers. This order grants intervention to all movants.

WGML states that the export authorization requested apparently is intended to displace sales in eastern Canada that are now being made by TransCanada which would have an adverse effect on TransCanada's ability to meet its take-or-pay obligations to its producers. WGML contends that the proposed export would result in less competition in U.S. markets among suppliers of spot market gas and U.S. pipelines because gas supplies would be reduced and because U.S. pipelines would have an incentive to use pipeline capacity to transport exported gas and thereby reduce pipeline capacity

available to bring competing gas supplies into their markets. WGML also contends that action should be delayed on Hadson's application until the ERA has granted Western Gas Marketing U.S.A. Limited's (WGML U.S.A. is an affiliate of WGML) application to import gas in ERA Docket No. 86-08-NG. Finally, WGML argues that any condition imposed on any authorization to WGML U.S.A. requiring imports to be transported by pipelines with open access status under the Federal Energy Regulatory Commission's (FERC) Order No. 436 should also be imposed on any export authorization issued to Hadson.<sup>2/</sup>

Hadson contends in an August 15, 1986, answer to WGML's comments that WGML has made no showing that Hadson's proposed export would displace gas presently being transported to U.S. markets or that limiting Hadson's market to the U.S. only would enhance competition. Hadson also contends that there is no basis in the record of this proceeding for delay in making a decision pending resolution of WGML's import application or for conditioning the export authorization sought as requested by WGML. Hadson argues that denying or conditioning the export as requested by WGML would restrict the competitiveness of Hadson's potential gas sales instead of permitting the free operation of market forces. Hadson also argues that there is no need for a hearing on the issue of competition since there is no basis in fact or law to support WGML's contention that competition would be harmed by expanding Hadson's market area to include Canadian markets.

### III. Decision

Hadson's application has been evaluated to determine if the gas it proposes to import and export for resale on the spot market meets the public interest requirements of Section 3 of the NGA. Under Section 3, imports and exports are to be authorized unless there is a finding that they "will not be consistent with the public interest."<sup>3/</sup> With respect to imports, the Administrator is guided by the DOE's natural gas import policy guidelines.<sup>4/</sup> Under the DOE guidelines, the competitiveness of the import arrangement is the primary consideration for meeting the public interest test. With respect to exports, the ERA considers the domestic need for the gas to be exported and any other issue determined by the Administrator to be appropriate in a particular case.

The import and export authorization sought would provide Hadson with blanket approval, within prescribed limits, to negotiate and transact individual, short-term sales arrangements without further regulatory action.

Hadson's proposed arrangement for the import of Canadian gas, as set forth in the application, is consistent with the DOE policy guidelines.

Further, no party has objected to the proposed import. The fact that each sale will be voluntarily negotiated, short-term and market-responsive provides assurance that the transactions will be competitive. This, like other, similar blanket imports<sup>5/</sup> approved by the ERA, will enhance competition in the marketplace.

With respect to its proposed export, the current gas surplus in the United States,<sup>6/</sup> the fact that Hadson proposes to import more gas than it exports, and the fact that the short-term, market-responsive nature of the contracts Hadson would enter into will permit the gas to be sold wherever it is needed based upon the law of supply and demand, demonstrates that the proposed export will not conflict with domestic need for the gas. Further, no party has contested the applicant's position on domestic need for the gas to be exported.

WGML did, however, express opposition to the proposed export, contending that the proposed export would hinder competition in U.S. markets by reducing gas supplies and by tying up pipeline capacity that would otherwise be available to transport competing supplies into U.S. markets. WGML implies that U.S. pipelines would give preferential treatment to gas exports headed for eastern Canada in order to lessen competition in U.S. markets. WGML also alleges that the exported gas would compete with and displace sales of its parent, TransCanada, in Canadian markets.

WGML's contentions are without merit. There is no reason to believe that Hadson would transport gas out of U.S. markets if it could be sold where it is at market-responsive prices, or that Hadson's proposed gas export would get preferential transportation treatment as opposed to having idle pipeline capacity allocated to it. Further, exportation of surplus gas, i.e., gas not salable at competitive prices in the U.S. by Hadson, would enhance competition, not reduce it. While WGML may understandably be concerned about competition from U.S. spot market gas for Canadian market sales of its parent, TransCanada, such competition will reduce gas prices and is part of a natural evolution towards a fully competitive North American gas market. It is the DOE's position that full development of a North American energy market will benefit gas consumers in both the U.S. and Canada and help achieve greater market stability.<sup>7/</sup>

Although WGML requests that trial-type hearing be conducted on the impact of reduced competition arising from Hadson's proposed export, the ERA sees no reason to conduct such a hearing. The flexibility afforded to Hadson to sell its gas on the spot market wherever it can be sold under market-responsive terms will enhance, not reduce competition. Further WGML has

failed to demonstrate that there is a material issue genuinely in dispute for which a trial-type hearing is needed to obtain a full and true disclosure of the facts as required by the ERA's administrative procedures.<sup>8/</sup> WGML's request for a trial-type hearing is therefore denied.

WGML also requests: (1) that a decision on Hadson's import/export application be deferred until after the ERA has acted on WGML U.S.A.'s import application in ERA Docket No. 86-08-NG, and (2) that any condition imposed on WGML U.S.A.'s proposed import be also imposed on any export authorization issued to Hadson. Under the ERA's administrative procedures, ERA decisions are rendered on a case-by-case basis taking into account all of the information in the record in each proceeding.<sup>9/</sup> There is no linkage to cases in other ERA dockets unless there is a substantive or procedural reason for such linkage. No such reasons have arisen in this case. Accordingly, WGML's request that the ERA delay or condition its decision on Hadson's import/export application based on resolution of WGML U.S.A.'s import application in an unrelated proceeding is denied.

Hadson's arrangement for the export of natural gas, and its proposed import arrangement, as set forth in its application, are therefore determined to be consistent with the DOE policy guidelines and Section 3 of the NGA. The thrust of the DOE policy is to promote competition in the natural gas marketplace by allowing commercial parties to negotiate freely their own trade arrangements with minimal government interference. The ERA finds that the proposed import and export project furthers the policy of reducing trade barriers and encouraging market forces to achieve a more rational and competitive distribution of goods between the U.S. and Canada.

After taking into consideration all of the information in the record of this proceeding, I find that granting Hadson authority to import up to 50 Bcf of Canadian natural gas and to export up to 20 Bcf of natural gas over a two-year period for resale in the spot market is not inconsistent with the public interest.<sup>10/</sup>

#### Order

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

A. Hadson Canada, Inc., is authorized to import up to 50 Bcf of natural gas from Canada over a two-year period beginning on the date of first import.

B. Hadson Canada, Inc., is authorized to export up to 20 Bcf of natural

gas to Canada over a two-year period beginning on the date of first export.

C. This natural gas may be imported or exported at any point on the international border where existing pipeline facilities are located.

D. Hadson shall notify the ERA in writing of the date of the first delivery of natural gas imported and the date of the first delivery of natural gas exported under Ordering Paragraphs A and B above respectively, within two weeks after the dates of such deliveries.

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

F. The request for a trial-type hearing by WGML is hereby denied. The separate request by WGML that the ERA delay or condition its decision on Hadson's application based on resolution of WGML U.S.A.'s import application in Docket No. 86-08-NG is also denied.

G. The motions to intervene, as set forth in this Opinion and Order, are hereby granted, provided that participation of each intervenor shall be limited to matters specifically set forth in its motion to intervene and not herein specifically denied, and that the admission of each intervenor shall not be construed as recognition that it might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., on September 9, 1986.

--Footnotes--

1/ 51 FR 24201, July 2, 1986.

2/ Western Gas Marketing U.S.A. Limited, ERA Docket No. 86-08-NG, is one of several cases pending before the ERA involving blanket requests for authority to import Canadian gas in which the ERA has been requested to

condition the authorization to require that the imported gas be moved over open access pipelines (pipelines participating in the FERC's Order No. 436 program). The complete text of the FERC Order No. 436 is found in the FERC Statutes and Regulations Para. 30,665 (50 FR 42208, October 18, 1985).

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

4/ 49 FR 6684, February 22, 1984.

5/ See e.g., NHP Energy, Inc., 1 ERA Para. 70,655 (June 19, 1986); ITRP/Kimball Gas Ventures, A Joint Venture, 1 ERA Para. 70,656 (June 24, 1986); ANR-TransCanada Energy Co. 1 ERA Para. 70,659 (July 14, 1986); Tricentrol Petroleum Marketing, Inc., 1 ERA Para. 70,662 (August 1, 1986).

6/ See Natural Gas Monthly, May 1986, Energy Information Administration, DOE/EIA-0130 (86/05) Table 6, p. 14.

7/ In the joint declaration on trade issued at the 1985 Quebec Summit, President Reagan and Prime Minister Mulroney of Canada endorsed . . . "maintaining and extending open access to each other's energy markets . . . including natural gas. . . ." Declaration by the Prime Minister of Canada and the President of the United States, March 18, 1985, Presidential Documents Volume 21--Number 12 at 325.

8/ 10 CFR Part 590.313.

9/ 10 CFR Part 590.404.

10/ Because the proposed import and export of gas will use existing pipeline facilities, the DOE has determined that granting this application is clearly 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 therefore an environmental impact statement or environmental assessment is not required.