

Cited as "1 ERA Para. 70,668"

Natgas (U.S.), Inc. (ERA Docket No. 86-29-NG), September 23, 1986.

DOE/ERA Opinion and Order No. 145

Order Granting Blanket Authorization to Export Natural Gas to Canada on a Short-Term or Spot Basis

## I. Background

On April 22, 1986, Natgas (U.S.), Inc. (Natgas), 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 export up to 75 Bcf of natural gas for a two-year period beginning on the date of first delivery for sales on a short-term or spot basis, primarily in Canada. The applicant, a corporation registered in the State of Delaware, is a wholly-owned subsidiary of Pan-Alberta Gas Ltd. (Pan-Alberta), a Canadian corporation.

Natgas proposes to export gas supplied by Pan-Alberta or other Canadian or U.S. suppliers. Natgas anticipates that a large percentage of the gas would be either western Canadian gas transported across U.S. territory to buyers in eastern Canada, or Canadian or U.S. gas currently committed to U.S. buyers and released for spot or short-term sales in eastern Canada.<sup>1/</sup> Natgas proposes to act either as an exporter on its own behalf or as broker or agent on behalf of U.S. and/or Canadian suppliers and/or Canadian purchasers. The specific terms of each export and sale would be negotiated individually to be market-responsive. Natgas intends that the exported gas would be transported through existing pipeline facilities. It proposes to file quarterly reports with the ERA.

In support of its application, Natgas states that the proposed export arrangement is fully consistent with the public interest. Natgas cites recent ERA authorization of a similar export arrangement in which the ERA noted that the principal consideration in reviewing a natural gas export application is whether there is domestic need for the gas to be exported.<sup>2/</sup> Natgas notes that there is currently a buyer's market for gas in the United States with supply exceeding demand and maintains that market conditions are unlikely to change significantly during the two-year term of the proposed export. In addition, Natgas contends that U.S. domestic needs are irrelevant with respect to exports of gas imported from western Canada, and that Canadian or U.S. gas currently committed to U.S. buyers can be sold and exported for use in eastern

Canada only if released. Natgas further contends that the proposed export arrangement is consistent with the thrust of the DOE's announced policies ". . . to promote competition in the natural gas marketplace by allowing commercial parties to negotiate freely their own trade arrangements with minimal government interference." 3/

## II. Interventions and Comments

The ERA issued a notice of the application on May 5, 1986, inviting protests, motions to intervene, notices of intervention, and written comments to be filed by June 16, 1986.<sup>4/</sup> Motions to intervene, without comment or request for additional procedures, were received from Southern California Gas Company and Pacific Gas Transmission Company. A protest of the application and request for a trial-type hearing was filed by Western Gas Marketing Limited (WGML). This order grants intervention to all movants.

WGML, a Canadian corporation and a wholly-owned subsidiary of TransCanada PipeLines Limited (TransCanada), is TransCanada's marketing agent for natural gas sales. An affiliate of WGML, Western Gas Marketing U.S.A. Limited (WGML U.S.A.), has filed an application with the ERA for blanket authority to import Canadian gas into the United States.<sup>5/</sup>

WGML argues that gas exported to eastern Canada would be expected to displace sales now made by TransCanada, and would adversely affect TransCanada's ability to meet its take-or-pay obligations to Canadian producers at a time when TransCanada has agreed to eliminate or substantially reduce the take-or-pay obligations owed it by its U.S. customers. WGML protests the filing on the grounds that it may result in reduced competition among suppliers for short-term and spot sales to U.S. customers. WGML alleges that U.S. pipelines whose markets are adversely affected by strong competition, heightened by the availability of ample gas supplies, would have an incentive to provide transportation of gas to be exported to Canada. Exported gas might otherwise compete with a pipeline's own sales, WGML contends, and devoting capacity to transporting exports will reduce the availability of capacity to the pipeline's own sales customers for carriage of alternate supplies. WGML requests a trial-type hearing to assess the adverse impact of the proposed exports on U.S. customers.

WGML further alleges that it would be unfair to allow Natgas to compete with WGML for short-term and spot sales in Canada while WGML's affiliate, WGML U.S.A., is unable to compete for such sales in the United States because action on WGML U.S.A.'s application for blanket import authority has been delayed by the ERA order of May 5, 1986,<sup>6/</sup> providing opportunity for further

comment on the issue of whether all import authorizations should be conditioned to require that imported gas be transported only on U.S. pipelines operating under the open-access provisions of FERC Order No. 436.7/ WGML asserts that the ERA should not act on the Natgas export application until the authorization sought by WGML U.S.A. is granted. Further, WGML requests that any condition imposed on the WGML U.S.A. import authorization also be imposed on an export authorization if issued to Natgas.

Natgas replied to WGML's motion on June 30, 1986. Natgas argues that (1) WGML's motion to intervene should be denied for failure to state an adequate claim of interest, since the claims it raises relate to other parties, namely TransCanada, U.S. consumers, and WGML U.S.A.; (2) WGML's objection that exports by Natgas might displace TransCanada sales in eastern Canada represents an attempt to diminish competition that is inconsistent with both U.S. and Canadian government policies to expand access to each other's energy markets; (3) the Canadian National Energy Board not the ERA, must approve the importation of the gas into Canada, and will decide its consistency with the Canadian public interest; (4) it is nonsensical to suggest that U.S. consumers may be damaged by the proposed Natgas exports, given the small volumes involved, the limited term of the requested authorization, and the current large gas surplus in the United States; (5) the transportation of the export volumes will require certificates from the FERC, not the ERA, which does not have jurisdiction, and it is the FERC's responsibility to consider any negative impact of such transportation, an impact that Natgas finds not credible; (6) WGML's argument that the ERA should defer action on the Natgas export application until WGML U.S.A.'s import application is granted is without merit because the condition at issue in connection with the WGML U.S.A. import application involves U.S. producer concerns regarding their access to U.S. markets, concerns that are unrelated to WGML's desire in this case to limit competition in eastern Canada.

### III. Decision

The application filed by Natgas has been evaluated to determine if the proposed export arrangement meets the public interest requirements of Section 3 of the NGA. Under Section 3, an export is to be authorized unless there is a finding that it "will not be consistent with the public interest." 8/ In reviewing natural gas export applications, the ERA considers whether there is domestic need for the gas to be exported, and examines any other issues the Administrator determines are appropriate in a particular case.9/

The current gas surplus in the United States,10/ and the fact that Natgas' short-term contracts, for sale either of its currently-authorized

imports or of the proposed exports, would necessarily be market-responsive, demonstrate that the proposed export will not conflict with domestic need for the gas. Further, no party has contested the applicant's position that there is no domestic need for the gas proposed to be exported.

Despite acknowledging that the U.S. gas market is competitive and amply supplied with gas, both domestic and imported, WGML nevertheless protests the proposed export. WGML contends that it contains the seeds of potentially anti-competitive behavior by U.S. pipelines. WGML speculates that they might divert domestic gas to Canada to diminish competition with the pipelines' own sales, or deny carriage of gas for domestic use in preference for carrying gas for export. Yet WGML does not demonstrate how the small amount of exports proposed by a marketer could permit actions by U.S. pipelines, even if motivated to diminish competition, to impact adversely on U.S. consumers. On the contrary, it appears to the ERA that such export opportunities could expand sales opportunities for domestic producers without adversely affecting consumers. WGML's protest is without merit.

WGML also alleges that the proposed export would be expected to displace sales of its parent, TransCanada, in Canadian markets. While WGML may understandably be concerned about competition from U.S. spot market gas, 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 United States and Canada and help achieve greater market stability.<sup>11/</sup>

WGML also requests a trial-type hearing "to quantify the adverse impact that the proposed export would have on U.S. consumers." No spokesman for U.S. consumers raised this objection or joined in this request. The ERA has concluded that it is extremely unlikely that U.S. consumers can be threatened by this proposed gas export. WGML has not shown that this is a material and relevant factual issue genuinely in dispute, nor demonstrated that the requested hearing is necessary for the ERA to make a decision on the application, in accordance with 10 CFR Sec. 590.313 of the ERA's administrative procedures. Therefore, the request for a trial-type hearing is denied.

WGML also requests that the ERA not act on the Natgas export application while the import authorization sought by its affiliate, WGML U.S.A., is pending, and that any condition imposed on that import authorization also be imposed on an export authorization if issued to Natgas. As the ERA clearly stated in its May 5 procedural order, the issue there is whether or not it

would be appropriate for the ERA to require in import authorizations that imported gas be carried only over pipelines that have accepted the status of open-access transporter as provided by FERC Order No. 436. 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>12/</sup> The ERA sees no relation between the issue in WGML U.S.A. and those raised by WGML in Natgas' application. Therefore, the ERA declines either to condition or to defer action on this application on the basis of the reasons identified by WGML.

After taking into consideration all the information in the record of this proceeding, I find that granting Natgas blanket authority to export up to 75 Bcf of natural gas for a two-year term beginning on the date of first delivery is not inconsistent with the public interest.<sup>13/</sup>

### Order

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

A. Natgas (U.S.) Inc. (Natgas) is authorized to export up to 75 Bcf of natural gas to Canada over a two-year period beginning on the date of first delivery.

B. Natgas shall notify the ERA in writing of the date of first delivery of natural gas exported under Ordering Paragraph A above within two weeks after the date of such delivery.

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

D. The request by Western Gas Marketing Limited (WGML) for a trial-type hearing is denied. The separate request by WGML that the ERA defer or condition its decision on Natgas' application based on resolution of the import application by Western Gas Marketing U.S.A. Limited in Docket No. 86-08-NG is

also denied.

E. The request by Natgas to deny WGML's motion to intervene is denied.

F. 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 this proceeding.

Issued in Washington, D.C., September 23, 1986.

--Footnotes--

1/ Natgas is an authorized importer of Canadian natural gas under Natgas (U.S.) Inc., DOE/ERA Opinion and Order No. 118, 1 ERA Para. 70,640 (April 14, 1986).

2/ See Yankee International Company, DOE/ERA Opinion and Order No. 99, 1 ERA Para. 70,617 (December 30, 1985).

3/ Id.

4/ 51 FR 17796, May 15, 1986.

5/ Western Gas Marketing U.S.A. Limited, Application to Import Natural Gas, ERA Docket No. 86-08-NG.

6/ Tennessee Gas Pipeline Company, Western Gas Marketing U.S.A. Ltd., HNG/InterNorth Gas Marketing, Inc., Order Providing Opportunity for Further Comments and Granting Interventions, May 5, 1986.

7/ FERC Statutes and Regulations Para. 30,665 (50 FR 42208, October 18, 1985).

8/ 15 U.S.C. Para. 717b.

9/ 49 FR 6684, February 22, 1984.

10/ See Energy Information Administration, U.S. Department of Energy, Natural Gas Monthly, June, 1986, DOE/EIA-0130 (86/06) Table 6, p. 14. The estimated gas surplus is 2.3 Tcf for the period July 1986 to December 1986.

11/ 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 of America Regarding Trade in Gas and Services," March 18, 1985; Weekly Compilation of Presidential Documents, March 25, 1985, (Vol. 21, No. 12, pp. 325-26).

12/ 10 CFR Sec. 590.404.

13/ Because the proposed exportation of gas will use existing pipeline facilities, the 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 environmental assessment is not required.