

Cited as "1 ERA Para. 70,681"

Direct Energy Marketing Limited (ERA Docket No. 86-55-NG), December 16, 1986.

DOE/ERA Opinion and Order No. 158

Order Granting Blanket Authorization to Import Natural Gas from Canada

I. Background

On September 26, 1986, Direct Energy Marketing Limited (DEML) 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 200 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery. DEML additionally requests pursuant to 10 CFR Sec. 590.405, authorization to transfer this authorization to its designated U.S. subsidiary corporation when created. DEML would import the gas for resale or would act as a broker or agent on behalf of U.S. purchasers and Canadian suppliers, for sale on a short-term or spot market basis. DEML intends to utilize existing pipeline facilities for the transportation of the volumes imported.

The applicant, a corporation registered in the Province of Alberta, Canada, is a producer-owned corporation authorized to conduct business in the Provinces of British Columbia, Saskatchewan, Manitoba, Ontario and Quebec. DEML would receive its supply of gas from its shareholders' production and reserves.

In support of its authorization request, DEML asserts that the short-term nature of the requested authority will promote competition in the marketplace.

DEML states its proposed import will be competitive and is therefore consistent with the Secretary's import policy guidelines under which the competitiveness of the proposed import is the primary consideration in evaluating the public interest.^{1/} The specific terms of each sale arrangement would be negotiated on an individual basis, including the price and volumes.

DEML proposes to file quarterly reports with the ERA. Each report would indicate by month the transactions made during the period and the details of each transaction.

The ERA issued a notice of the application on August 26, 1986.^{2/} Motions to intervene, without comment or request for additional procedures, were received from Southern California Gas Company, Northwest Pipeline Corporation, Northwest Alaskan Pipeline Company, El Paso Natural Gas Company, and Pacific Gas Transmission Company. This order grants intervention to these movants.

II. Decision

The application filed by DEML has been evaluated 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."^{3/} The Administrator is guided by the DOE's natural gas import policy guidelines.^{4/} Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test.

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

DEML's application also requests ERA approval to transfer its import authorization to a U.S. subsidiary corporation when such a subsidiary is created. Section Sec. 590.405 of ERA's administrative procedures prohibits the transfer or assignment of import or export authority unless specifically authorized by the Administrator. The ERA considers this portion of DEML's request premature and it is denied. At such time as DEML's U.S. subsidiary is created, DEML may file its request for transfer of authority to the ERA and it will be considered by the Administrator.

The DEML proposed arrangement for the import of Canadian gas, as set forth in the application, is consistent with the DOE policy guidelines. Further, no party objected to the proposed import. The fact that each spot sale will be voluntarily negotiated, short-term, and market-responsive, as asserted in DEML's application, provides assurance that the transactions will be competitive. This application is similar to other blanket imports recently approved by the ERA.^{5/} Under the proposed import, DEML'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.

After taking into consideration all the information in the record of this proceeding, I find that granting DEML blanket authority to import up to 200 Bcf of Canadian natural gas over a term of two years is not inconsistent

with the public interest.^{6/}

ORDER

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

A. Direct Energy Marketing Limited (DEML) is authorized to import up to a total volume of 200 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery.

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

C. DEML shall notify the Economic Regulatory Administration (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.

D. With respect to the imports authorized by this Order, DEML shall file with the ERA within 30 days following each calendar quarter, quarterly reports indicating whether sales of imported gas have been made, and if so, giving, by month, the total volume of the imports in MMcf and the average purchase and sales price per MMBtu at the international border. The report 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 entry, 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.

E. DEML's request for authorization to transfer the authorization granted in this Order to its proposed, unidentified subsidiary is denied.

F. 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 December 16, 1986.

--Footnotes--

1/ 49 FR 6684, February 22, 1984.

2/ 51 FR 30394, August 26, 1986.

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

4/ 49 FR 6684, February 22, 1984.

5/ See e.g., Czar Resources, Inc., 1 ERA Para. 70,660 (July 17, 1986); Canadian Natural Gas Clearinghouse (U.S.), Inc., 1 ERA Para. 70,661 (July 31, 1986); Spot Market Corporation, 1 ERA Para. 70,665 (August 27, 1986); CU Energy Marketing, Inc., 1 ERA Para. 70,669 (September 23, 1986); and Brymore Gas Marketing, Inc., 1 ERA Para. 70,671 (October 3, 1986).

6/ Because the proposed importation 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. Sec. 4321, et seq.) and therefore an environmental impact statement or environmental assessment is not required.