

Cited as "1 ERA Para. 70,128"

Phillips 66 Natural Gas Company and Marathon Oil Company (ERA Docket No. 87-42-LNG), November 16, 1987.

DOE/ERA Opinion and Order No. 206

Order Amending Authorization to Export Liquefied Natural Gas

### I. Background

On July 29, 1987, Phillips 66 Natural Gas Company (Phillips 66) and Marathon Oil Company (Marathon) filed a joint application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), requesting the ERA to amend their existing liquefied natural gas (LNG) export authorization. The application was filed pursuant to Section 3 of the Natural Gas Act (NGA),<sup>1/</sup> and DOE Delegation Order No. 0204-111.2/<sup>2/</sup> The application requests the ERA to amend their existing LNG export authorization to permit them to charge more market-responsive prices to their two Japanese customers, The Tokyo Electric Power Company, Incorporated and Tokyo Gas Company, Ltd.

The LNG export authorization held by Phillips 66 and Marathon was granted originally by the Federal Power Commission (FPC) on April 19, 1967,<sup>3/</sup> and subsequently amended by DOE/ERA Opinion and Order No. 49 (Order 49) issued on December 14, 1982.<sup>4/</sup> Under their present arrangement, Phillips 66 and Marathon are authorized to export annually up to 50.57 trillion Btus through May 31, 1989.

By their application, the applicants specifically want the ERA to modify the requirement in ordering paragraph C of Order 49 that requires them to adhere to certain very specific terms in the pricing of LNG under this export authorization. The applicants state that the present pricing formula for LNG is primarily based on the volume-weighted average of the "official" government selling prices for the top 20 crude oils imported into Japan. The applicants maintain that this pricing formula has not functioned properly for almost two years due to the fact that various governments have been selling their oil for prices far below those published as their "official" selling prices.

During the past year, the applicants and their two Japanese purchasers have had discussions regarding possible changes to the pricing formula and agreed to utilize provisional prices pending the outcome of these discussions. The result of these negotiations was the Seventeenth Amendatory Agreement dated April 16, 1987, which sets forth market-oriented prices from March 1986

through March 1987, and obligates the applicants to make refunds to its two purchasers to the extent that the provisional prices exceeded firm settlement prices during this time period. Furthermore, the applicants and their two customers agreed in principle that prices with respect to LNG sold after March 31, 1987, would reflect the market and not be constrained by the original price adjustment formula found in Order 49.

The applicants state that they want the ERA to amend Order 49 by replacing the old price adjustment formula with a more market sensitive pricing formula as outlined in their application. Under the proposed modification, the price adjustment formula would continue to be primarily based on the weighted average official selling price of the top 20 crude oils imported in Japan; however, it would contain another adjustment, to be used as needed, to keep their supply "competitive with other sales of LNG in the Japanese market." Furthermore, the proposed price adjustment formula will be applied to the period covered by the Seventeenth Amendatory Agreement, as well as future sales made under this LNG export arrangement. If the ERA is not willing to grant its request to replace the price adjustment formula, the applicants alternatively request the ERA to modify Order 49 to permit the collection of the prices set forth in the Seventeenth Amendatory Agreement.

In support of their application, the applicants maintain that the requested amendment would allow them to respond quickly to changes in the marketplace and remain competitive. If the ERA fails to approve their proposed amendment, the applicants maintain that their LNG prices will be above market level and could result in the termination of the export arrangement.

## II. Interventions and Comments

Notice of this application was issued on August 21, 1987, and published in the Federal Register on August 28, 1987,<sup>5/</sup> inviting protests, motions to intervene, or notices of intervention and written comments. The notice provided a 30-day public response period ending September 28, 1987. No responses were received.

## III. Decision

The application filed jointly by Phillips 66 and Marathon has been evaluated pursuant to Section 3 of the NGA and DOE Delegation Order No. 0204-111. Under Section 3, an export is to be authorized unless there is a finding that the export "will not be consistent with the public interest." 6/

The proposed export arrangement, as amended, is in harmony with the

principal strategies adopted by the DOE in fostering United States' international energy security policy; namely, reducing and eliminating existing trade barriers between trading partners, strengthening our market approach to trade, and reducing government intervention. The proposed amendment is the result of lengthy discussions between the applicants and their Japanese customers and achieves a more competitive export supply. The ERA continues to believe that allowing free operation of market forces, as evidenced here, will be the best means for fostering the development of more effective and efficient gas trade between the United States and other countries and ensuring protection of the public interest. We find the proposed amendment to be an innovative approach in solving the applicants' current marketing problems, and one that will enhance competition in the marketplace. Further, no party objected to the proposed amendment.

After taking into consideration all the information in the record of this proceeding, I find approving the proposed amendment, as requested by the joint applicants, is not inconsistent with the public interest.<sup>7/</sup>

#### ORDER

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

The price adjustment formula found in ordering paragraph C of DOE/ERA Opinion and Order No. 49 be replaced with the following formula:

$$\begin{array}{l} \text{Avg. selling price} \\ \text{(month prior to} \\ \text{Price for Calendar month)} \\ \text{Calendar month)} = 592.8 \times \frac{\text{-----}}{34.48} + \text{Adjustment} \end{array}$$

where: average selling price is the weighted average official price in U.S. dollars per barrel for top 20 crude oils imported into Japan in previous year and sold on term basis.

adjustment is an adjustment required to keep the price of Alaskan LNG competitive with other sales of LNG in the Japanese market (adjustment to change as frequently as market conditions require or on request of either party).

Issued in Washington, D.C., on November 16, 1987.

--Footnotes--

1/ 15 U.S.C. Sec. 717b.

2/ 49 FR 6684, February 22, 1984.

3/ 37 FPC 777.

4/ 1 ERA Para. 70,116.

5/ 52 FR 32585.

6/ See supra 1.

7/ Because the proposed exportation of gas will use existing liquefaction and 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.