

Cited as "1 ERA Para. 70,688"

Enron Gas Marketing, Inc. (ERA Docket Nos. 86-39-NG, 86-40-NG), March 9, 1987.

DOE/ERA Opinion and Order No. 163

Order Granting Blanket Authorizations to Export and Import Natural Gas

I. Background

On July 10, 1986, Enron Gas Marketing, Inc. (EGM), filed two applications 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 to Canada, solely for exchange purposes, up to 60,000 Mcf per day (120,000 total Mcf/d) of natural gas produced in the State of Montana, and to import, in exchange, an equivalent volume of natural gas from Canada for spot market or short-term sales to customers in the United States. The exported gas would be supplied by Tricentrol Holdings, Inc. (THI), a Montana producer, and the imported volumes would be sold by EGM, either for its own account or for the account of others, to U.S. purchasers.

EGM, a wholly owned subsidiary of Enron Corp. (Enron), is a Delaware corporation with its principal place of business in Omaha, Nebraska. It is a marketer of natural gas to short-term or spot markets. EGM states that it will use existing facilities currently owned by Enron's pipeline affiliate, Northern Natural Gas Company (Northern), to transport the gas to an export point near Willow Creek, Saskatchewan, for sale and delivery to Consolidated Natural Gas Limited (Consolidated), a Canadian pipeline. EGM or its purchaser clients will repurchase an equivalent volume of natural gas from Consolidated at a point on the international border between Minnesota and Manitoba near Emerson, Manitoba. Northern was granted a long-term export and import authority by the Federal Power Commission to move Montana natural gas to Minnesota via this route in 1972.^{1/}

By an agreement dated April 16, 1986, Enron agreed to sell to THI the natural gas gathering and transmission facilities located in Montana that are presently owned by Northern, and which are associated with these export/import applications. In conjunction with the April 16th agreement EGM and THI further agreed to undertake certain related transactions, including two contracts, a spot purchase agreement and a sale and repurchase agreement, pursuant to which EGM will market natural gas for THI.

The spot purchase agreement obligates EGM to purchase, at THI's discretion, up to 6,000 Mcf per day of THI's Montana natural gas production for spot market sales. The sale and repurchase agreement contains no such minimum-take provision. Further, under the sale and repurchase agreement, EGM will only take natural gas for which THI has designated a domestic repurchaser. Both the spot purchase agreement and the sale and repurchase agreement become effective when Northern receives approval from the Federal Energy Regulatory Commission (FERC) to transport natural gas pursuant to FERC Order No. 436,2/ and all required regulatory approvals are obtained. The spot purchase agreement will terminate when the FERC approves the sale of Northern's Montana system to THI.3/ The sale and repurchase agreement will run until October 31, 1992, or until THI gives written notice to EGM of termination.

The authority sought by EGM in these two applications, as confirmed in letters to the ERA dated December 5, 1986, is to export and import natural gas for sale in the domestic spot market in accordance with its specific obligations to THI under the spot purchase agreement (ERA Docket No. 86-40-NG) and the sale and repurchase agreement (ERA Docket No. 86-39-NG). The applicants requested that the terms of the authorizations coincide with the length of the respective agreements. In support of the applications EGM asserts that the proposed arrangements would not result in a net importation of natural gas, and, therefore, the normal policy considerations do not apply.

II. Interventions and Comments

The ERA issued a notice of the applications on August 19, 1986, inviting protests, motions to intervene, notices of intervention, and written comments to be filed by September 25, 1986.4/ Motions to intervene in both applications, without comments or requests for additional procedures, were received from Southern California Gas Company, Iowa Gas Company, Northern Central Public Service Co., a Division of Conovan Companies, Inc., El Paso Natural Gas Company, and, in a joint filing, from Tricentrol Interstate Pipeline Inc., Tricentrol Gathering Company, Inc., Tricentrol United States, Inc., and Tricentrol Petroleum Marketing Inc. Notices of intervention, in both applications without comments or requests for additional procedures, were received from the Minnesota Public Utilities Commission and the Energy Issues Intervention Office of the Minnesota Department of Public Service. This order grants intervention to all movants.

III. Decision

EGM's applications have been evaluated to determine if the natural gas

export/import arrangements meet 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." 5/ With respect to imports, the Administrator is guided by DOE's natural gas import policy guidelines.6/ 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 issues determined by the Administrator to be appropriate in a particular case.

The requested export and import authorizations would provide the applicant with blanket approval, within prescribed limits, to negotiate and transact individual, short-term and spot market sales arrangements without further ERA action. These proposals are distinguished from the usual import/export requests in that, for all volumes exported to Canada, equivalent volumes will be imported into the United States. The arrangements contemplate neither a net export of domestic natural gas nor a net import of Canadian natural gas; they are merely transshipments of domestic gas for domestic consumption.

The proposed arrangements to export and import natural gas, as set forth in these applications are consistent with the DOE policy guidelines. With respect to EGM's proposed exports, the requirements to consider the domestic need for the gas is unnecessary since it is intended that equivalent volumes are to be made available for domestic resale. With respect to the proposed imports, the fact that the imported gas would be sold on the spot market ensures that the transactions will be market responsive and the prices competitive. These, like other similar blanket imports approved by the ERA,7/ will enhance competition in the marketplace. Further, no party objected to the proposed export/import arrangements.

EGM's application to export and import gas pursuant to the spot purchase agreement differs from previous blanket authorizations granted by the ERA in the EGM is required to take up to 6,000 Mcf per day from THI, at THI's discretion. Although no previous blanket authorization applications have involved a contract with a minimum-take provision, the ERA finds that arrangement described in this application is not inconsistent with the public interest, and is consistent with the DOE policy guidelines for the following reasons.

First, the spot purchase agreement stipulates that EGM can unilaterally set the price to be paid for the gas based on market/supply conditions. THI's only recourse, if it is unwilling to accept EGM's quoted price, is to cancel

the agreement. This market-sensitive pricing clause will ensure that EGM will be able to competitively market any gas it must take under the minimum-take provision.

Second, since the 6,000 Mcf per day minimum-take provision is only 10 percent of the total 60,000 Mcf per day authorization sought pursuant to the spot purchase agreement, it should not adversely affect the competitiveness of the arrangement. Additionally, the minimum-take provision, which is only effective on days that THI elects to offer gas to EGM, should be reasonably short-lived since it and the spot purchase agreement end with the FERC's approval of Northern's abandonment application.^{8/}

Third, the spot purchase agreement is an integral part of a series of related transactions between Enron and THI. One of these transactions is a release agreement, by which Northern is released from its purchase obligations with THI and THI affiliates. Another is a gas purchase contract assignment agreement, in which Northern may assign additional natural gas purchase contracts with other Montana producers to THI. Northern estimates that the release agreement will free it from purchasing 20.2 Bcf in net remaining reserves from THI, and the assignment agreement could save it an additional \$800,000 annually.^{9/} Therefore, the benefits EGM derives from released purchase obligations as a result of the overall series of transactions with THI justify EGM's acceptance of the minimum-take provision in the spot purchase agreement.

Finally, since the purpose of the arrangement is to move domestic gas to domestic markets, and the ERA regulatory involvement is due solely to the transportation arrangements being used, the ERA accepts the judgment of the parties concerning the appropriate contract mechanisms necessary for participation of domestically produced gas in the domestic market.

The authorization sought by EGM pursuant to the sale and repurchase agreement would run for the term of that agreement, which is until the earlier of October 31, 1992, or until THI's written notice to EGM of termination. The ERA's policy has been to grant no more than a two-year term for blanket authorizations in recognition of their experimental nature.^{10/} However, since the arrangements contemplated in this authorization involve no net exportation of domestic gas nor net importation of Canadian gas, but merely represent transshipments of domestic gas for domestic consumption, the full term of the authorization requested will be granted. This request, like that made by Tricentrol United States, Inc., and Tricentrol Petroleum Marketing Inc.,^{11/} does not propose a sale for resale in the Canadian market, nor an import of Canadian gas for sale in the domestic market, and therefore does not

constitute a departure from the ERA's current two-year import/export blanket program. Limiting the authorization to a two-year period would recognize the form of the proposed transaction--an export/import, but would ignore its substance--movement of domestic gas to domestic markets. Such a limitation would place EGM at a competitive disadvantage with other domestic producers and marketing companies, who, because their pipeline connections are interstate rather than international, would not be subject to a two-year limitation when negotiating sales to domestic purchasers. Approving the requested term makes this new authorization consistent with the term of the original export/import authorization granted Northern.^{12/}

After taking into consideration all of the information in the record of these proceedings, I find that granting EGM authority to export for exchange purposes only, a total of 120,000 Mcf per day (60,000 Mcf per day for each marketing agreement) of natural gas produced in the State of Montana, and to import from Canada, in exchange, equivalent volumes of natural gas for ultimate sale to customers in the United States, on a short-term or spot market basis, is not inconsistent with the public interest.^{13/}

ORDER

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

A. Enron Gas Marketing, Inc. (EGM), is authorized to export to Canada, for exchange purposes only, up to 60,000 Mcf per day of natural gas produced in the State of Montana, at a point on the international border near Willow Creek, Saskatchewan, and to import, in exchange, an equivalent volume of natural gas from Canada, at a point on the international border near Emerson, Manitoba. The authorization granted in this Ordering Paragraph is solely for natural gas which EGM exports and imports for its own account, or for the account of others, pursuant to the spot purchase agreement between EGM and Tricentrol Holdings, Inc. (THI), contained in the application submitted as part of ERA Docket No. 86-40-NG, and will run from the effective date of the spot purchase agreement, which is when the Federal Energy Regulatory Commission (FERC) approves Northern's application to transport gas pursuant to FERC Order No. 436, until the termination of that agreement, which will be when the FERC approves the sale of Northern's Montana system to THI.

B. EGM is authorized to export to Canada, for exchange purposes only, up to 60,000 Mcf per day of natural gas produced in the State of Montana, at a point on the international border near Willow Creek, Saskatchewan, and to import, in exchange, an equivalent volume of natural gas from Canada at a

point on the international border near Emerson, Manitoba. The authorization granted in this Ordering Paragraph is solely for natural gas which EGM exports and imports for its own account, or for the account of others, pursuant to the sale and repurchase agreement between EGM and THI contained in the application submitted as part of ERA Docket No. 86-39-NG. The term of this authorization will run from the effective date of the sale and repurchase agreement, which is when the FERC approves Northern's application to transport gas pursuant to FERC Order No. 436, until the termination of that agreement, which is the earlier of (1) October 31, 1992, or (2) written notice from THI to EGM of termination.

C. EGM shall notify the ERA in writing of the dates of the first exports and imports of natural gas under Ordering Paragraphs A and B above within two weeks after the dates of such exports and imports.

D. With respect to the exchanged exports and imports authorized by this Order, EGM shall file with the ERA within 30 days following each calendar quarter, quarterly reports indicating whether exchanges of natural gas have been made, if so, giving by month, the total volume in MMcf of each exchange, the average price per MMBtu on which each exchange was based, as appropriate, and the charges for transportation by each Canadian transporter. The reports shall also provide the details of each exchange transaction, including the date of sale and start of delivery for each transaction, the names of the contracting parties, estimated or actual duration of the transaction, domestic transporters, point of entry, markets served, and if applicable, any special contract provisions not usually associated with a commercial energy exchange in the normal course of business.

E. EGM shall notify the ERA in writing of the termination of either the spot purchase agreement or the sale and repurchase agreement within two weeks after the date of such termination.

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 these proceedings.

Issued in Washington, D.C., on March 9, 1987.

--Footnotes--

1/ See Northern Natural Gas Company, et al., 47 FPC 1202 (May 11, 1972).

2/ 50 FR 42408, October 18, 1985.

3/ On July 9, 1986, Northern filed an application with the FERC for authorization to abandon its Montana system by sale and transfer to THI. See FERC Docket No. CP70-69-001.

4/ 51 FR 30395, August 26, 1986.

5/ 51 USC Sec. 717.

6/ 49 FR 6684, February 22, 1984.

7/ See e.g., Brymore Gas Marketing Inc., 1 ERA Para. 72,590 (October 3, 1986); Tennessee Gas Pipeline Company, 1 ERA Para. 72,596 (November 6, 1986); Western Gas Marketing U.S.A., Ltd., 1 ERA Para. 72,607 (November 6, 1986); Enron Gas Marketing, Inc., 1 ERA Para. 72,619 (November 6, 1986); Northwest Marketing Company, 1 ERA Para. 72,630 (November 7, 1986).

8/ See supra note 3.

9/ See Northern Natural Gas Company, FERC Docket No. CP70-69-001, filing accepted July 9, 1986.

10/ See e.g. Tennessee Gas Pipeline Company, 1 ERA Para. 70,654 (June 19, 1986).

11/ See DOE/ERA Opinion and Order No. 149, 1 ERA Sec. 72,592 (October 20, 1986), as amended in DOE/ERA Opinion and Order No. 149A, 1 ERA Sec. 72,680 (December 15, 1986).

12/ See Northern Natural Gas Company, et al., 47 FPC 1202 (May 11, 1972).

13/ 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.