

Cited as "1 ERA Para. 70,702"

Bonus Energy, Inc. (ERA Docket No. 86-52-NG), May 26, 1987.

DOE/ERA Opinion and Order No. 166-A

Order Denying Rehearing and Stay of Order

I. Background

On March 24, 1987, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued DOE/ERA Opinion and Order No. 166 (Order No. 166) in ERA Docket No. 86-52-NG.1/ That order granted Bonus Energy, Inc. (Bonus), blanket authority to import up to 50 Bcf of Canadian natural gas through existing pipeline facilities over a two-year period.

A joint motion to intervene by ten producer associations (Producers) 2/ opposed the application, requesting summary dismissal, or alternatively, requesting that the ERA either hold a trial-type hearing or impose a condition on the authorization that would require any gas imported under the authorization to be transported through pipelines providing open access under the Federal Energy Regulatory Commission's (FERC) Order 436 program.3/ Producers' opposition was premised on their concern over the alleged negative impact on domestic producers of competition from Canadian imports which, they maintain, receive unequal delivery access to domestic gas markets. Order No. 166 denied Producers' request for an evidentiary hearing and their request for imposition of the condition.

On April 23, 1987, Producers filed a request for rehearing and requested a stay of Order No. 166. In support of their request, they argue that the ERA erred in relying on the DOE natural gas policy guidelines4/ in making its determination; that it erroneously assigned the burden of proof to the Producers; that it failed to assess the need for imported gas, or the anticompetitive effects of the order which could result in harm to domestic supplies; that it failed to follow its regulations during the proceedings; that its action created a regulatory gap by allowing imports by unregulated marketing brokers; that it failed to give proper consideration to Producers' requested condition; that it failed to conduct the requested evidentiary hearing; that it failed to conduct an environmental assessment; that it failed to consider the competitive merits of the subject application on a mutually exclusive basis with all other pending applications; and finally, that the ERA failed to conform to the Secretary's recent findings regarding the lack of competitive domestic markets.5/

II. Decision

Except for their argument regarding conformation to the Secretary's recent findings, all of the issues which Producers identify in their request for rehearing were raised either by Producers in their original motion to intervene in opposition to Bonus' application, or by Producers^{6/} or a member association, Panhandle Producers and Royalty Owners Association,^{7/} in earlier proceedings. Producers have submitted no new information in support of their arguments which would compel the ERA to reconsider the positions it took in Order No. 166, as well as in prior proceedings. With the exception of certain issues discussed below, we do not intend to revisit Producers' arguments now.

Producers argue that Order No. 166 fails to conform to recent findings by the Secretary of Energy regarding the lack of a competitive domestic market. They quote from the Secretary's report on energy security to emphasize the lack of open access transportation in the U.S. natural gas market and attribute this problem in part to FERC regulatory policies that impede current gas market price signals. The ERA's decision in this docket, Producers argue, exacerbates and may contribute to the perpetuation of this problem. We disagree and note that it was precisely to encourage the transmission of market signals and to increase the amount of competitively priced natural gas available to consumers, by fostering the growth of a natural gas spot-market, that the ERA initiated the blanket authorization program.^{8/} Bonus intends to engage in spot market sales which by their nature must be responsive to the price signals of the marketplace. The granting of this authorization, like FERC Order 436, is a step toward a more open and competitive natural gas market, unlike the open-access condition proposed by Producers, which would discriminate against imported gas.

Producers allege that the ERA did not comply with NEPA in issuing Order No. 166. The ERA has considered this argument previously^{9/} and concluded, in the context of factual circumstances not materially distinguishable from the facts in this proceeding, that the argument is without merit. DOE guidelines for NEPA compliance^{10/} provide for three possible levels of analysis, depending on the potential for environmental impact. In cases where there is clearly a potential for significant impact, an environmental impact statement (EIS) is prepared. In uncertain cases, an environmental assessment (EA) is prepared to determine if an EIS is needed. In situations when clearly no significant impacts will occur which could necessitate the preparation of an EIS, a memorandum to the file is prepared to document this fact. A memorandum of this type was prepared for Order No. 166. The analysis contained therein supports the conclusion that, because existing pipelines will be used, clearly there should be no significant impact to the physical environment. Indeed, the

intervenors have alleged only that the ERA should analyze a potential for significant socio-economic impacts. However, it is well established by both case law and by regulation that socio-economic impacts, alone, do not establish a basis for requiring an EIS.¹¹ Therefore, a memorandum to the file is the appropriate level of NEPA compliance when no other issues which involve the physical environment are at issue.

Producers continue to claim that no meaningful assessment of need has taken place in this docket, and point out that a sizable portion of blanket import authorizations have not been activated. The ERA does not agree with either the Producer's primary claim, nor with their deduction regarding need based on lack of import activity in the blanket authorization program. Under blanket authorizations providing for sales in spot or short-term markets, gas will only be sold as needed and when it is competitively priced. Under these conditions, the ERA considers need to be a function of marketability. The fact that certain blanket authorizations have not been activated supports the ERA's belief that the allocation of gas as needed is accomplished on a competitive basis.

III. Conclusion

The ERA has determined that the Producers' application for rehearing presents no information that would merit reconsideration of our findings in Order No. 166. Accordingly, this order denies Producers' request for rehearing and its request for stay of the subject order.

ORDER

For the reasons set forth above, pursuant to Section 3 and 19 of the Natural Gas Act, it is ordered that:

The application for rehearing and request for stay of DOE/ERA Opinion and Order No. 166 submitted jointly by California Independent Producers Association, East Texas Producers & Royalty Owners Association, Energy Consumers and Producers Association, Independent Oil & Gas Association of New York Inc., Independent Petroleum Association of America, Independent Petroleum Association of Mountain States, Independent Petroleum Association of New Mexico, North Texas Oil & Gas Association, Panhandle Producers and Royalty Owners Association, and West Central Texas Oil and Gas Association is hereby denied.

Issued in Washington, D.C., on May 26, 1987

--Footnotes--

1/ Bonus Energy, Inc., 1 ERA Para. 70,691.

2/ California Independent Producers Association, East Texas Producers & Royalty Owners Association, Energy Consumers and Producers Association, Independent Oil & Gas Association of New York Inc., Independent Petroleum Association of America, Independent Petroleum Association of Mountain States, Independent Petroleum Association of New Mexico, North Texas Oil & Gas Association, Panhandle Producers and Royalty Owners Association, and West Central Texas Oil and Gas Association.

3/ The FERC's Order 436 established a voluntary program under which a pipeline agrees to provide non-discriminatory transportation for all customers on a first-come, first-served basis. Open access to such transportation would allow non-traditional suppliers such as independent producers to ship their gas to any market where they could find customers. FERC Statutes and Regulations, Para. 30,665.

4/ 49 FR 6684, February 22, 1984.

5/ Energy Security, A Report To The President Of The United States, DOE/S-0057 (March, 1987).

6/ Northridge Petroleum Marketing U.S., Inc., 1 ERA Para. 70,610 (November 27, 1985); Northwest Pipeline Corporation, 1 ERA Para. 70,629 (February 10, 1986); Michigan Consolidated Gas Company, 1 ERA Para. 70,631, (February 21, 1986); CPEX Pacific, Inc., 1 ERA Para. 70631 (February 21, 1986); Texas Eastern Transmission Corporation, 1 ERA Para. 70,646 (May 21, 1986).

7/ Tennessee Gas Pipeline Company, Western Gas Marketing U.S.A., Ltd., and Enron Gas Marketing, Inc., 1 ERA Para. 70,684 (January 5, 1987).

8/ See Northwest Alaskan Pipeline Company, 1 ERA Para. 70,586 (February 26, 1985).

9/ See supra note 6.

10/ Department of Energy Guidelines for Compliance with the National Environmental Policy Act, (45 FR 20694, March 28, 1980; as amended at 47 FR 7976, February 23, 1982; 48 FR 685, January 6, 1983; and 50 FR 7629, February 25, 1985)

11/ National Association of Government Employees v. Rumsfield, 418 F.Supp. 1302 (ED Pa. 1996); and 40 CFR Sec. 1508.14.