

Cited as "1 ERA Para. 70,720"

Kimball Energy Corporation (ERA Docket No. 87-26-NG), August 19, 1987.

DOE/ERA Opinion and Order No. 190

Order Granting Blanket Authorization to Import Natural Gas from Canada and Granting Interventions

I. Background

On May 15, 1987, Kimball Energy Corporation (Kimball) of Arlington, Texas, 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 authority to import daily quantities of up to 100,000 Mcf of Canadian natural gas and an aggregate volume of 75 Bcf over a two year period. The gas would be sold on a short-term basis in the domestic spot market. Kimball, a marketer and broker of natural gas, is currently importing Canadian gas for spot market sales through its joint enterprise with ITRP Natural Gas Ventures, Inc. (ITRP), under a separate blanket authorization granted by the ERA on June 24, 1986, in DOE/ERA Opinion and Order No. 133 (Order No. 133).<sup>1</sup> ITRP is not a party to this application and this application is not related to that joint authorization.

In this application, Kimball asks the ERA to approve the importation for a term of two years beginning on the date when initial deliveries of gas commence and to allow the authorization to be automatically extendible from month to month thereafter, until cancelled by Kimball or the ERA upon 30 days written notice. Kimball would purchase the volumes to be imported from a variety of unidentified Canadian suppliers and resell them to U.S. purchasers or serve as an agent acting on behalf of spot market customers. The identity of each purchaser and the specifics of each sale are not known at this time. However, as presently contemplated, all sales would be on a best-efforts basis under freely-negotiated contracts containing market-responsive pricing provisions with no minimum purchase or take-or-pay obligation. The proposed imports would be accomplished using existing pipeline capacity and no new construction would be involved. The transportation arrangements, including the delivery points where the gas would enter the U.S., may vary for different transactions.

Kimball proposes to submit reports to the ERA, on a confidential basis, within 45 days after the end of each calendar quarter, describing the particular spot market arrangements into which it has entered.

In support of its application, Kimball asserts that the flexibility of the proposed arrangements, including the commitment to price and volume adjustments depending on end-user market conditions, ensures that the gas will only be imported when and where the price to the ultimate consumer is competitive.

The ERA issued a notice of the application on June 23, 1987, inviting protests, motions to intervene, notices of intervention, and comments to be filed by July 29, 1987.<sup>2/</sup> Motions to intervene without comment or request for additional procedures were filed by Northwest Pipeline Corporation, Pacific Gas Transmission Company, El Paso Natural Gas Company, and Northwest Alaskan Pipeline Company. This order grants intervention to these movants.

## II. Decision

The application filed by Kimball has been evaluated to determine if the proposed import arrangement conforms to 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."<sup>3/</sup> The Administrator is guided by the DOE's natural gas import policy guidelines. Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test.<sup>4/</sup>

Kimball's application is similar to other blanket imports approved by the ERA.<sup>5/</sup> The authorization sought would provide Kimball with blanket import approval to negotiate and transact individual, short-term, sale arrangements without further regulatory action.

Kimball's proposed arrangement for the importation of Canadian gas, as set forth in the application and with the exceptions discussed below, 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 Kimball's application, provides assurance that the transactions will be competitive. Under the proposed import, Kimball'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.

Kimball has proposed that the term of the authorization be extended beyond two years on an automatic renewal basis. In addition, Kimball proposes to modify the reporting requirements ordinarily imposed on blanket authorizations by filing the quarterly reports containing information on individual transactions within 45 days after the end of each calendar quarter

rather than 30 days and requesting confidential treatment for the information. The ERA rejected the same proposals in Order No. 133, finding no basis for deviating from our practice of limiting blanket import authorizations to two years and requiring publicly available reports be filed 30 days following each calendar quarter. For the reasons enunciated in Order No. 133, we are again denying these proposals. The ERA's decision to limit this authorization to two years, however, in no way prejudices the applicant's ability to file for an extension at the end of the two-year period, if needed.

Although Kimball has applied for authorization to import a total of 75 Bcf of natural gas in daily amounts of up to 100,000 Mcf, the ERA's recent practice in approving blanket authorizations is to impose a two-year aggregate volume limitation but not to impose any daily or annual volume limit. This practice is intended to permit importers maximum flexibility to make available competitively priced gas to meet market demand. It is the ERA's intention to continue that practice in this case.

After taking into consideration all the information in the record of this proceeding, I find that granting Kimball blanket authority to import up to 75 Bcf of Canadian natural gas over a term of two years is not inconsistent with the public interest.<sup>6/</sup>

### ORDER

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

A. Kimball Energy Corporation (Kimball) is authorized to import up to 75 Bcf of Canadian natural gas over a two-year period beginning on the date of the first delivery.

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

C. Kimball shall notify the ERA in writing of the date of the 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, Kimball 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. Kimball's request for automatic month-to-month renewal of this authorization after two years is hereby denied.

F. Kimball's request that the reports under Ordering Paragraph D be filed within 45 days of each calendar quarter and that the ERA accord confidential treatment to them is hereby denied.

G. 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 August 19, 1987.

--Footnotes--

1/ ERA Para. 70,656. Order No. 133 approved the importation of up to 100,000 Mcf of gas per day and up to a total of 73 Bcf over a two-year period beginning on the date of first delivery. Deliveries commenced on February 2, 1987.

2/ 52 FR 24206, June 29, 1987.

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

4/ 49 FR 6684, February 22, 1984.

5/ See e.g., Bountiful Corporation, 1 ERA Para. 70,703 (May 26, 1987); Quintana Minerals Corporation, 1 ERA Para. 70,704 (June 11, 1987); GasMark, Inc., 1 ERA Para. 70,705 (June 11, 1987); ANR Gathering Company, 1 ERA Para. 70,708 (June 29, 1987); and American Central Gas Pipeline Corporation, 1 ERA Para. 70,709 (June 29, 1987).

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. 4321, et seq.) and therefore an environmental impact statement or environmental assessment is not required.