

Cited as "1 ERA Para. 70,802"

Western Gas Marketing U.S.A. Ltd. (ERA Docket No. 88-24-NG), August 4, 1988.

DOE/ERA Opinion and Order No. 263

Order Granting Blanket Authorization to Import and Export Natural Gas and Granting Interventions

I. Background

On April 20, 1988, Western Gas Marketing U.S.A. Ltd. (Western) 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 300 Bcf of Canadian natural gas and export to Canada up to 100 Bcf of natural gas over a two-year term beginning on the date of the first delivery after expiration of Western's existing blanket import authorization. Pursuant to DOE/ERA Opinion and Order No. 152, Western is currently authorized to import up to 300 Bcf of Canadian natural gas through November 30, 1988.^{1/} Western, a Delaware corporation, is a wholly-owned subsidiary of TransCanada PipeLines Limited.

Under the new blanket import and export authority requested, Western plans to import and export Canadian and domestic natural gas for its own account or act as either a broker or agent for both U.S. and Canadian purchasers and suppliers. Western intends to make spot and short-term sales to United States or Canadian customers on both a firm and interruptible basis. Western asserts that the terms of each import/export sale, including price and volume, would be negotiated individually and would reflect market conditions and individual customer needs. Western asserts that its proposed import/export arrangement is fully consistent with the public interest requirements of Section 3 of the NGA ^{2/} and with DOE's policies on international gas trade.^{3/}

In support of its application, Western states that any natural gas volumes approved for import or export by the ERA would be transported through existing facilities at the border and within the United States and it therefore anticipates no environmental impacts. Western plans to submit quarterly reports giving the details of individual transactions. Under its existing import authorization expiring November 30, 1988, Western reported imports of 38.256 Bcf of natural gas through March 31, 1988.

The ERA issued a notice of this application on May 25, 1988, inviting

protests, motions to intervene, notices of intervention, and comments to be filed by July 5, 1988.^{4/} Motions to intervene without comments or requests for additional procedures were filed by Southern California Gas Company, Pacific Gas Transmission Company, Northwest Pipeline Company and ANR Pipeline Company. This order grants intervention to these movants.

II. Decision

The application filed by Western has been evaluated to determine if the proposed import/export arrangement meets the public interest requirements of Section 3 of the NGA. Under Section 3, an import or export must be authorized unless there is a finding that it "will not be consistent with the public interest." ^{5/} With regard to import applications, the Administrator is guided by the DOE's natural gas import policy guidelines.^{6/} Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test. In reviewing natural gas export applications, 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.

Western's import/export arrangement for Canadian and U.S. domestic natural gas, as set forth in the application, is consistent with the DOE's international gas trade policy and Section 3 of the NGA. The ERA believes that Western's market-based approach for negotiating short-term import/export sales will enhance competition in North American natural gas markets. By transacting individual import/export sales solely on the basis of prevailing market pricing and gas supply conditions, Western's arrangement ensures that U.S. and Canadian customers will only purchase gas to the extent that producers and sellers can provide supplemental spot or short-term volumes, that U.S. and Canadian purchasers need such import/export volumes, and that prices remain competitive. Thus, each import/export transaction must reflect the true value of the commodity being traded--otherwise no gas sales will be made.

In addition, the current domestic gas surplus, the fact that Western proposes to import more than it exports, and the short-term, market-responsive nature of the contracts Western will enter into demonstrate that it is unlikely the proposed export volumes will be needed domestically during the term of this authorization. Further, no party has opposed Western's import/export proposal. The ERA also finds that Western's import/export proposal, like other blanket import/export proposals approved by the ERA,^{7/} will further the Secretary's policy goals of reducing trade barriers by encouraging market forces to achieve a more competitive distribution of goods between the U.S. and Canada. Thus, Western's import/export arrangement will

enhance cross-border competition in the marketplace.

After taking into consideration all of the information in the record of this proceeding, I find that granting Western blanket authority to import up to 300 Bcf of Canadian natural gas and to export up to 100 Bcf of natural gas to Canada during a term of two years is not inconsistent with the public interest.^{8/}

ORDER

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

A. Western Gas Marketing U.S.A. Ltd. (Western) is authorized to import up to 300 Bcf of Canadian natural gas and to export to Canada up to 100 Bcf of natural gas during a two-year period, beginning on the date of first delivery after expiration of Western's existing import authorization granted in DOE/ERA Opinion and Order No. 152.

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

C. Western shall notify the ERA in writing of the date of first delivery of natural gas authorized in Ordering Paragraph A above within two weeks after import or export deliveries begin.

D. With respect to the imports and exports authorized by this Order, Western shall file with the ERA within 30 days following each calendar quarter, quarterly reports indicating whether sales of imported and/or exported natural gas have been made, and if so, giving, by month, the total volume of the imports and exports in MMcf and the average price for imports and exports per MMBtu at the international border. The reports shall also provide the details of each import or export transaction, including the names of the seller(s), and the purchaser(s), including those other than Western, estimated or actual duration of the agreement(s), transporter(s), points of entry or exit, market(s) served, and, if applicable, the per unit (MMBtu) demand/commodity charge breakdown of the price, any special contract price adjustment clauses, and any take-or-pay or make-up provisions.

E. 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 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 4, 1988.

--Footnotes--

1/ Western Gas Marketing U.S.A. Ltd., 1 ERA Para. 70,675 (1986); reh'g denied, DOE/ERA Opinion and Order No. 152-A, 1 ERA Para. 70,684 (1987); Panhandle Producers and Royalty Owners Ass'n v. ERA, Nos. 87-4146 to 87-4148 (5th Cir., June 28, 1988).

2/ 15 U.S.C. Sec. 717b.

3/ 49 FR 6684, February 22, 1984.

4/ 53 FR 20362, June 3, 1988.

5/ 15 U.S.C. Sec. 717b.

6/ See supra note 2.

7/ See e.g. Tricentrol United States, Inc. and Tricentrol Petroleum Marketing, Inc., 1 ERA Para. 70,672 (October 20, 1986); Enron Gas Marketing, Inc., 1 ERA Para. 70,688 (March 9, 1987); Woodward Marketing, Inc., June 3, 1988 (unpublished); and Reliance Gas Marketing Company, June 22, 1988 (unpublished).

8/ 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.