

Cited as "1 ERA Para. 70,822"

Consolidated Fuel Corporation (ERA Docket No. 88-45-NG), November 8, 1988.

DOE/ERA Opinion and Order No. 280

Order Granting Blanket Authorization to Import and Export Natural Gas From and to Canada and Mexico and Granting Intervention

I. Background

On July 27, 1988, Consolidated Fuel Corporation (Consolidated) 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),^{1/} for blanket authorization to import and export up to a total of 100 Bcf of natural gas from and to Canada and Mexico, over a two-year period beginning on the date of first delivery. Consolidated, a Delaware corporation with its principal place of business in Dallas, Texas, is a marketer of natural gas.

According to the application, the authority requested by Consolidated contemplates the following types of import and export transactions: (1) importation of supplies of Canadian and Mexican natural gas for consumption in U.S. markets; (2) importation of Canadian natural gas for eventual return (via export) to Canadian markets; (3) exportation of domestically produced natural gas for consumption in Canadian and Mexican markets; and (4) exportation of domestically produced gas for eventual return (via import) to U.S. markets. The company intends to utilize existing pipeline facilities for the transportation of the volumes to be imported or exported and to submit quarterly reports detailing each transaction.

In support of its application, Consolidated asserts that the import of Canadian and Mexican gas under market-responsive terms would make available to U.S. consumers competitively-priced spot market gas. The import of Canadian gas for eventual return to Canada would benefit U.S. interests because it would improve pipeline utilization, thereby reducing per-unit transportation and sales rates on any U.S. pipelines providing transportation. Further, an authorization to export gas would permit Consolidated to make available to spot market purchasers in Canada and Mexico supplies of U.S. gas for which there is no present regional or national need. Finally, Consolidated maintains that the export and return to the U.S. of domestically produced gas would enable U.S. consumers who might not otherwise be able to secure transportation

on U.S. pipelines, the ability to purchase domestically produced gas or to take advantage of least cost transportation.

The ERA issued a notice of this application on August 26, 1988, inviting protests, motions to intervene, notices of intervention and comments to be filed by September 26, 1988.^{2/} A motion to intervene without comment or request for additional procedures was filed by El Paso Natural Gas Company. This order grants intervention to this movant.

II. Decision

The application filed by Consolidated 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."^{3/} With regard to import applications, the Administrator is guided by the DOE's natural gas import policy guidelines.^{4/} 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.

Consolidated's import/export arrangement for Mexican, Canadian and U.S. domestic natural gas, as set forth in the application, is consistent with Section 3 of the NGA and the DOE's international gas trade policy. The ERA believes that Consolidated'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, Consolidated's arrangement ensures that U.S., Canadian, and Mexican customers will only purchase gas to the extent that producers and sellers can provide supplemental spot or short-term volumes, that U.S., Canadian, and Mexican 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, and the short-term, market-responsive nature of the contracts into which Consolidated will enter, demonstrate that it is unlikely that the proposed export volumes will be needed domestically during the term of this authorization. Further, no party has opposed Consolidated's import/export proposal. The ERA also finds that Consolidated's import/export proposal, like other blanket import/export

proposals approved by the ERA,^{5/} 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., Canada and Mexico. Thus Consolidated'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 Consolidated blanket authority to import and export up to 100 Bcf of natural gas from and to Canada and Mexico during a term of two years is not inconsistent with the public interest.^{6/}

ORDER

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

A. Consolidated's Fuel Corporation (Consolidated) is authorized to import and export up to a total of 100 Bcf of natural gas from and to Canada and Mexico during a two-year period, beginning on the date of first delivery.

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

C. Consolidated shall notify the Economic Regulatory Administration (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, Consolidated 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 Consolidated, 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 motion to intervene, as set forth in this Opinion and Order, is

hereby granted, provided that participation of the intervenor shall be limited to matters specifically set forth in its motion to intervene and not herein specifically denied and that admission of such 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 November 8, 1988.

--Footnotes--

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

2/ 53 FR 32645, August 26, 1988.

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

4/ 49 FR 6684, February 22, 1984.

5/ 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., 1 ERA Para. 70,800 (June 2, 1988); and Reliance Gas Marketing Company., 1 ERA Para. 70,702 (June 22, 1988).

6/ Because the proposed exportation of natural gas will use existing 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 (NEPA) (42 U.S.C. 4321, et seq.) and therefore an environmental impact statement or environmental assessment is not required. Be advised that in cases not involving new construction the DOE has issued a proposed categorical exemption to NEPA (See 53 FR 29934, August 9, 1988).