

Cited as "1 FE Para. 70,204"

Pan National Gas Sales, Inc. (ERA Docket No. 83-34-LNG), February 23, 1989.

DOE/FE Opinion and Order No. 289-A

Order Denying Rehearing

### I. Background

On December 23, 1988, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued DOE/ERA Opinion and Order No. 289 (Order 289),<sup>1/</sup> authorizing Pan National Gas Sales, Inc. (Pan National), to import, over a 20-year period, up to 3.3 Tcf of Algerian liquefied natural gas (LNG) for short-term and spot-market sales. The LNG will be supplied by Sonatrading Amsterdam B.V. (Sonatrading), a Netherlands company that is wholly owned by Sonatrach, Algeria's national oil and gas company. Pan National will market the LNG to individual customers after negotiating contract terms that are responsive to current market conditions.

The ERA determined that Pan National's arrangement with Sonatrading offered the same short-term, market-responsive flexibility as "blanket import authorizations." Accordingly, the agency imposed on Pan National conditions consistent with those imposed on all other blanket authorizations in order to safeguard the public interest. First, the ERA required Pan National (or a designated importer) to submit a separate application for import authority whenever any negotiated LNG sales arrangement exceeded two years in duration. Second, the ERA required Pan National to file quarterly reports giving individual contract details with respect to its sales.

Pan National filed an application for rehearing of Order 289 on January 23, 1989. Pan National requests that the required quarterly reports be kept confidential with respect to pricing information. Pan National also asks us to extend confidential treatment to its contracts involving arrangements exceeding two years. Pan National alleges that this information would result in competitive harm because the contract sales prices, once disclosed, would become ceiling prices, and, thus, would undercut future price negotiations.

In support of its rehearing application, Pan National cites DOE regulation 10 CFR 501.7(a)(11) permitting requests for confidential treatment of commercial information. Pan National also refers to a Federal Energy Regulatory Commission (FERC) regulation, 18 CFR 388.112 (1988), which provides

for discretionary confidential treatment in certain circumstances, and cites two FERC cases in which limited confidential treatment was granted by the FERC.<sup>2/</sup>

## II. Discussion

The authorization granted Pan National, as it pertains to gas import sales arrangements of two years or less, is similar to other "blanket" authorizations granted by the DOE. The Department's blanket import program has given commercial parties the flexibility to participate more fully in a changing gas market, the spot market in particular, because it enables importers to negotiate and transact individual, short-term sales arrangements without further regulatory action. A cornerstone of the program is the mandatory quarterly reports which are required to be filed by all firms receiving blanket authorizations and which are available for public inspection.

As Order 289 made clear, under the DOE's natural gas import policy guidelines,<sup>3/</sup> the government's role in authorizing an import arrangement is to evaluate whether the arrangement assures the competitiveness of the import throughout the contract period, and to provide a review process whereby affected parties have sufficient opportunity to demonstrate that the import is not consistent with the public interest. The quarterly reports are the mechanism for providing the necessary information for the DOE to conduct that evaluation and for enabling interested parties to participate in the review process. Denying the public access to that information would not only deprive the DOE of the benefit of public input in the review process, but could also undermine public confidence in the integrity of that process.

Further, in the initial orders granting short-term blanket authority, the DOE discussed the agency's responsibility for ensuring that the parameters surrounding each sale are in the public interest.<sup>4/</sup> The reporting requirements were imposed in those cases and all subsequent "blanket-type" authorizations in order to fulfill that responsibility. The agency decided that advanced knowledge of the precise terms of each transaction was not necessary because the public interest would be fully protected by the after-the-fact reporting condition; the quarterly reports are the quid pro quo for receiving what amounts to pre-approval of import arrangements under a blanket import authorization. The DOE's blanket import program, including the reporting requirements, has been upheld by the Federal courts.<sup>5/</sup>

## III. Decision

It is within DOE's discretion whether or not to afford Pan National the

confidential treatment it seeks.<sup>6/</sup> In exercising its discretion, the DOE considers both the merits of the specific request and what, if any, effect the denial or granting of the request will have on DOE's "public interest" responsibilities under Section 3 of the Natural Gas Act and the successful ongoing blanket program. For the reasons discussed below, we are denying Pan National's request for confidentiality.

#### A. Confidential Treatment of the Quarterly Reports

Pan National has not made a convincing argument that it would suffer any competitive harm if this information is open to public scrutiny.<sup>7/</sup> Pan National bases its request for confidentiality on the argument, unsupported, that disclosure of pricing information will create a price ceiling for future sales. We do not understand the relevance of Pan National's "price ceiling" argument to the short-term, market-responsive sales arrangements contemplated by Order 289 and subject to the reporting requirements. The presumption of competitiveness that supports the DOE's belief that "blanket-type" authorizations are not inconsistent with the public interest is based in large part on the spot and short-term nature of the transactions which allow them to adapt to changing market conditions. The price of natural gas will be set by the competitive market, not by the prior arrangements of a particular gas supplier or purchaser. Thus, the pricing information required by the reporting condition should not affect the competitiveness of future market-responsive transactions. Indeed, the DOE emphasizes it is unaware of any adverse impact resulting from reporting requirements imposed consistently on scores of blanket import authorizations approved since early 1985,<sup>8/</sup> and Pan National has failed to cite any such instance. In particular, Pan National has cited no cases where reported prices created price ceilings.

Also, we note that the reporting system already affords some short-term confidentiality. Quarterly reports are not required to be filed until 30 days after the end of the quarter in which the sales are made. Thus, information is not public for at least 30 days and up to 120 days prior to the filing of the report.

Furthermore, as discussed in Section II of this decision, it is the DOE's policy that disclosure of specific terms of sales under blanket authorizations, details which are not available at the time of the authorization, enables the public to monitor, evaluate, and comment on the individual import agreements. Granting confidentiality would prevent public input and possibly undermine public confidence in the blanket import program. For this and those other reasons discussed above, Pan National's request that it be able to designate portions of its required quarterly reports as

confidential is therefore denied.

## B. Confidentiality for Long-Term Arrangements

We are also not willing to pre-approve confidential treatment for long-term sales agreements that would be submitted by Pan National in separate LNG import applications involving arrangements of more than two years. This proceeding is not the appropriate place to determine whether and to what extent confidentiality should be granted in future applications. When we receive an application from Pan National (or a designated importer) for long-term import authority we will resolve any request for confidential treatment on its merits based on the specific circumstances in that case.

### 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, requested by Pan National Gas Sales, Inc., is hereby denied.

Issued in Washington, D.C. on February 23, 1989.

#### --Footnotes--

1/ Pan National Gas Sales, Inc., 1 ERA Para. 70,133 (December 23, 1988).

2/ See Transcontinental Gas Pipe Line Corp., 38 FERC Para. 61,245 (1987), and Natural Gas Pipeline Company of America, 43 FERC Para. 61,474 (1988).

3/ 49 FR 6684, February 22, 1984.

4/ See e.g., Cabot Energy Supply Corporation, 1 ERA Para. 70,124 (February 26, 1985), and Northwest Alaskan Pipeline Company, 1 ERA Para. 70,585 (February 26, 1985).

5/ See Panhandle Producers and Royalty Owners Association v. ERA (Panhandle I), 822 F.2d 1105 (D.C. Cir., June 30, 1987), and Panhandle Producers and Royalty Owners Association v. ERA (Panhandle II), 847 F.2d 1168 (5th Cir., June 28, 1988).

6/ See 10 CFR 590,202(e). The DOE regulation cited by Pan National in

its rehearing request, 10 CFR 501.7(a)(11), is applicable to the Fuel Use Act, not the NGA. However, even if it were applicable, 501.7(a)(11) specifically states that "DOE retains the right to make its own determination with regard to any claim of confidentiality," 501.7(a)(11)(ii).

7/ Pan National's analogy to the FERC is not persuasive. The FERC is a separate agency operating under different regulations and the cases cited deal with confidential treatment of take-or-pay buy-down settlements in the context of fundamentally different long-term arrangements.

8/ The reporting requirements imposed on Pan National, except for some slight variations to reflect shipment of the LNG import by tanker rather than a natural gas pipeline, are precisely the same as those imposed on all "blanket-type" authorizations.