Cited as "1 FE Para. 70,205"

Nicholson & Associates, Inc. (ERA Docket No. 88-74-NG), March 23, 1989

DOE/FE Opinion and Order No. 303

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

I. Background

On December 14, 1988, Nicholson & Associates, Inc. (Nicholson), 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 200 MMcf per day of natural gas from Canada and to export up to 50 MMcf per day of natural gas from the United States to Canada over separate two-year terms beginning on the dates the first import and the first export commence. The applicant, a Washington corporation with its principal place of business in Kirkland, Washington, is a marketer of oil and natural gas.

Under the blanket authority requested, Nicholson intends to import Canadian natural gas and export domestically produced gas under short-term or spot-market sales arrangements, either on its own behalf or as agent for both suppliers and purchasers. According to Nicholson, some of the Canadian gas may be imported for eventual return (via export) to Canadian markets. The terms of each contract, including price, duration, and volume, would be freely negotiated and be responsive to current conditions of the natural gas market. The company intends to use existing pipeline facilities for the transportation of the volumes to be imported and exported, and proposes to file quarterly reports detailing each transaction.

In support of its application, Nicholson asserts that the blanket import authority requested would allow it to import natural gas from a variety of suppliers for short-term sales under market-responsive terms and conditions which will assure both the competitiveness of the import and the need for the gas. The short-term nature of the sales would minimize domestic reliance on imported gas. In addition, Nicholson intends to purchase gas from a number of sources and would have sufficient flexibility to substitute supplies should one source become unavailable. With regard to gas to be exported, Nicholson maintains that it is incremental to the needs of domestic purchasers. Nicholson states that the short-term or spot nature of the export sales and the market-responsive gas sales contracts provide assurances that domestic purchasers of gas could bid for and purchase the gas.

The ERA issued a notice of this application on January 23, 1989, inviting protests, motions to intervene, notices of intervention, and comments to be filed by February 22, 1989.1/ A motion to intervene without comment or request for additional procedures was filed by Pacific Gas Transmission Company. This order grants intervention to this movant.

II. Decision

The application filed by Nicholson 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." 2/ With regard to import applications, the determination is guided by the DOE's natural gas import policy guidelines.3/ 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 domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements.

Nicholson's import/export arrangement for Canadian and U.S. natural gas, as set forth in the application, is consistent with Section 3 of the NGA and the DOE's international gas trade policy. We note that no party has opposed Nicholson's import/export proposal. We believe that Nicholson's market-based approach for negotiating short-term import sales will enhance competition in gas markets. Nicholson's arrangement, because the individual sales will be short-term and market-responsive, ensures that supplies are available, purchasers need such volumes, and that prices remain competitive. Thus, each import transaction must reflect the true value of the commodity being traded, or 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 Nicholson will enter demonstrate that it is unlikely the proposed export volumes will be needed domestically during the term of this authorization. Finally, Nicholson's proposal, like other blanket import/export proposals that have been approved,4/ 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, Nicholson'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 Nicholson blanket authority to import up to 146 Bcf of natural gas from Canada and to export up to 36.5 Bcf of natural gas to Canada over a two-year term beginning on the date of the first import and export is not inconsistent with the public interest. Consistent with our treatment of similar blanket applications, there will be no restriction on the daily volume that may be imported and exported. This maximizes the flexibility of spot-market importers and exporters to provide gas supplies to meet customer demand.

ORDER

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

A. Nicholson & Associates, Inc. (Nicholson), is authorized to import up to 146 Bcf of natural gas from Canada and to export up to 36.5 Bcf of natural gas to Canada over separate two-year terms beginning on the dates the first import and the first export commence.

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

C. Nicholson shall notify the Office of Fuels Programs, Fossil Energy, FE-50, Room 3F-056, 1000 Independence Avenue, S.W., Washington, D.C., 20585, in writing of the date of the first import and the date of the first export authorized in Ordering Paragraph A above within two weeks after each begins.

D. With respect to the imports and exports authorized by this Order, Nicholson shall file with the Office of Fuels Programs 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 Mcf 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 Nicholson, 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 filed by Pacific Gas Transmission Company is hereby granted, provided that its participation is limited to matters specifically set forth in its motion to intervene and not herein specifically denied, and that the 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 March 23, 1989.

--Footnotes--

1/ 54 FR 3110, January 23, 1989.

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

3/ 49 FR 6684, February 22, 1984.

4/ See e.g., American Central Gas Marketing Company, 1 ERA Para. 70,834 (January 9, 1989); Seagull Marketing Services, Inc., 1 ERA Para. 70,833 (December 30, 1988); Gas Masters, Inc., 1 ERA Para. 70,832 (December 30, 1988); and Union Gas Limited, 1 ERA Para. 70,825 (November 22, 1988).