

Cited as "1 FE Para. 70,275"

Enron Gas Marketing, Inc. (FE Docket No. 89-57-NG), December 12, 1989.

DOE/FE Opinion and Order No. 360

Order Amending and Extending Blanket Authorization to Import and Export Natural Gas

I. Background

On August 16, 1989, Enron Gas Marketing, Inc. (EGM), filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127, for blanket authorization to import up to 300 Bcf a year of Canadian natural gas and to export up to 300 Bcf a year of domestic natural gas to Mexico over a term of ten years. EGM stated that if a ten-year term is not approved, an authorization for a term of not less than two years beginning the later of January 1, 1990, or the date of first delivery is requested.

EGM, a Delaware corporation with its principal place of business in Houston, Texas, and a wholly-owned subsidiary of Enron Corp. currently holds a two-year blanket import authorization granted by DOE/ERA Opinion and Order No. 153 1/ in ERA Docket No. 86-09-NG. The existing import authority will expire on January 1, 1990. EGM requests authority to continue to import natural gas for short-term sales to interstate pipelines, intrastate pipelines, local distribution companies, cogeneration facilities and industrial end-users. EGM also requests new authority to export domestic natural gas for sale to industrial users in the area of Monterrey, Mexico. According to EGM, the specific terms of each import/export would be negotiated on an individual basis, including price and volumes, to reflect the current market conditions.

In support of its application, EGM maintains that the provisions of each spot transaction, including the price and volumes, would be freely negotiated, thus ensuring that transactions will reflect market conditions. Therefore, EGM contends that its import proposal is consistent with DOE's policy guidelines on the regulation of imported natural gas.

EGM intends to utilize existing pipeline facilities to transport the volumes to be imported and exported, and proposes to file quarterly reports detailing each transaction.

A notice of the application was issued on October 4, 1989, inviting protests, motions to intervene, notices of intervention, and comments to be filed by November 13, 1989.² Motions to intervene without comment or request

for additional procedures were filed by Clajon Gas Co., L.P., and Valero Transmission, L.P. This order grants intervention to these movants.

II. Decision

The application filed by EGM 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 authorizations, the determination 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 domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case.

EGM's uncontested import/export proposal for natural gas, with the limitation imposed below, is consistent with section 3 of the NGA and the DOE's international gas trade policy. EGM's market-based approach for negotiating short-term imports and exports should enhance competition in gas markets. Under the proposed arrangement short-term transactions will be negotiated in response to the marketplace, and thus must reflect the true value of the commodity being traded, or no gas sales presumably would take place. In addition, the current domestic gas supply, coupled with the short-term, market-responsive nature of the contracts into which EGM's proposes to enter, indicate that it is unlikely the proposed export volumes will be needed during the term of this authorization. Finally, EGM's proposal, like other blanket import/export proposals that have been approved,^{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, EGM's import/export arrangement will enhance cross-border competition in the marketplace.

After taking into consideration all the information in the record of this proceeding, I find that granting EGM blanket authorization to import up to 300 Bcf of Canadian natural gas from January 1, 1990, through December 31, 1991, and to export up to 300 Bcf of domestically produced natural gas to Mexico over a two-year term beginning January 1, 1990, under contracts with terms of up to two years, is not inconsistent with the public interest and should be approved. Consistent with precedent, DOE is not granting EGM's request for a ten-year term. The two-year limitation on terms for blanket authorizations continues to protect the public from potential adverse consequences of contractual provisions that are not scrutinized by FE at the time of this authorization.

ORDER

For the reasons set forth above, under section 3 of the Natural Gas Act, it is ordered that:

A. Enron Gas Marketing, Inc. (EGM), is authorized to import up to 300 Bcf of Canadian natural gas and to export to Mexico up to 300 Bcf of domestically produced natural gas over a two-year term beginning January 1, 1990, through December 31, 1991.

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

C. With respect to the imports and exports authorized by this Order, EGM 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 MMcf and the average purchase 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 EGM, estimated or actual duration of the agreement(s), transporter(s), points of entry or exit, 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.

D. The motions to intervene filed by Valero Transmission, L.P. and Clajon Gas Co., L.P. are hereby granted, provided that their participation is limited to matters specifically set forth in their motion 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 December 12, 1989.

--Footnotes--

1/ DOE/ERA Opinion and Order No. 153, 1 ERA Para. 70,767 (November 6, 1986). On January 6, 1989, the authority to regulate natural gas imports and exports was transferred from the ERA to the Assistant Secretary for Fossil Energy. DOE Delegation Order No. 0204-127 specifies the transferred functions (54 FR 11436, March 20, 1989).

2/ 54 FR 41669, October 11, 1989.

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

4/ 49 FR 6684, February 22, 1984.

5/ See e.g., Nicholson & Associates, Inc., 1 FE Para. 70,205 (March 23, 1989); Cornerstone Natural Gas Company, 1 FE Para. 70,216 (April 12, 1989); TransAmerican Natural Gas Corp., 1 FE Para. 70,220 (April 28, 1989); and Chevron Natural Gas Services, Inc., 1 FE Para. 70,223 (May 9, 1989).