

Cited as "1 FE Para. 70,320"

Empire Natural Gas Corporation (FE Docket No. 90-12-NG), June 7, 1990.

DOE/FE Opinion and Order No. 398

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

I. Background

On February 28, 1990, Empire Natural Gas Corporation (ENG) 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 20 Bcf of natural gas from Canada and to export up to 20 Bcf of natural gas to Canada. ENG, a New York corporation with its principal place of business in Green, New York, proposes to import and export gas on its own behalf or as an agent on behalf of other parties. The company requests that the import/export authority be approved for spot and short-term sales for a two year period commencing on the date of first delivery. The company anticipates that some of the gas to be exported under the proposed authorization would be reimported back into the United States for domestic consumption. ENG expects to utilize existing pipeline facilities for the transportation of the volumes to be imported or exported, and states it will submit quarterly reports detailing each transaction.

In support of its application, ENG maintains that the individual short-term and spot sales would be freely negotiated with market conditions determining the price and other terms of these transactions. ENG asserts that market sensitivity will assure both the competitiveness and the need for the gas throughout the term of the import arrangement. Additionally, the company maintains that the proposed export, given the current domestic supply of gas, would provide new markets for these supplies and would enhance competition in the marketplace.

A notice of the application was issued on March 23, 1990, inviting protests, motions to intervene, notices of intervention, and comments to be filed by April 30, 1990.¹ No comments were received.

II. Decision

The application filed by ENG 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 authorizations, 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.

ENG's uncontested import/export proposal 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. ENG's market-based approach for negotiating short-term imports and exports will 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 ENG proposes to enter, indicate that it is unlikely the proposed export volumes will be needed during the term of this authorization. Finally, ENG'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.

After taking into consideration all the information in the record of this proceeding, I find that granting ENG blanket authorization to import up to 20 Bcf of Canadian natural gas and to export up to 20 Bcf of domestically produced natural gas to Canada over a two-year term beginning on the date of the first import or export under contracts of two years or less, is not inconsistent with the public interest and should be approved.^{5/}

ORDER

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

A. Empire Natural Gas Corporation (ENG) is authorized to import up to 20 Bcf of Canadian natural gas and to export to Canada up to 20 Bcf of domestically produced natural gas over a two-year term beginning on the date of the first import or export.

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

C. Within two weeks after deliveries begin, ENG 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 the date that the first import or export authorized in Ordering Paragraph A above occurs.

D. With respect to the imports and exports authorized by this Order, ENG 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 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 ENG 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.

Issued in Washington, D.C., on June 7, 1990.

--Footnotes--

1/ 55 FR 11644, March 29, 1990.

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

3/ 49 FR 6684, February 22, 1984.

4/ 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); Chevron Natural Gas Services, Inc., 1 FE Para. 70,223 (May 9, 1989); Panhandle Trading Company, 1 FE Para. 70,254 (October 24, 1989); Equitable Resources Marketing Company, 1 FE Para. 70,271 (December 6, 1989); and Western Gas Processors, Ltd., (January 23, 1990).

5/ Because the proposed importation and exportation of 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

(42 U.S.C. 4321, et seq. and therefore an environmental impact statement or environmental assessment is not required. See 40 CFR Sec. 1508.4 and 54 FR 12474 (March 27, 1989).