UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

BROOKLYN UNION GAS COMPANY, et al.	)	DOE/ERA DOCKET NO. 86-48-NG
COMMONWEALTH GAS COMPANY	)	DOE/FE DOCKET NO. 91-92-NG

ORDER DENYING REQUEST FOR REHEARING

DOE/FE OPINION AND ORDER NO. 561-A

FEBRUARY 20, 1992

I. BACKGROUND

On August 12, 1991, Brooklyn Union Gas Company, et al. (Brooklyn Union), 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, requesting transfer of a long-term authorization to import Canadian natural gas. Brooklyn Union, a group of local distribution companies (the Repurchasers), is authorized to import up to 397,100 Mcf per day of Canadian natural gas over a 15-year period. The August 12th application was filed on behalf of Commonwealth Gas Company (Commonwealth) and Boston Gas Company (Boston Gas), and requested the transfer of 4,500 Mcf per day of Boston Gas' import authority as a Repurchaser to Commonwealth.

A notice of application was issued on November 6, 1991, inviting protests, motions to intervene, notices of intervention, and comments to be filed by December 9, 1991. 1/ The notice observed that DOE, in Orders 368 2/ and 368-A, 3/ had determined that the Brooklyn Union import arrangement involved in the current transfer request was competitive, needed, secure, and environmentally acceptable, and, inasmuch as Boston Gas' assignment of volumes to Commonwealth does not alter the underlying import arrangement, intervenors should limit their comments to the effect that adding Commonwealth would have on the arrangement. On December 9, 1991, a joint motion to intervene

1/ 56 FR 57324, November 8, 1991.

2/ 1 FE 70,285 (January 11, 1990).

3/ 1 FE 70,370 (November 15, 1990).

was received from the Independent Petroleum Association of America and from various state producers associations 4/ in opposition to the application. The intervenors (herein referred to as the Producers) requested dismissal of the application, or, in the alternative, sought discovery and requested an evidentiary hearing.

On December 19, 1991, in DOE/FE Opinion and Order No. 561 (Order 561), 5/ we found that granting the transfer of 4,500 Mcf per day of import authorization from Boston Gas to Commonwealth was not inconsistent with the public interest. In a filing submitted January 21, 1992, as supplemented by a January 22 submittal, the Producers requested rehearing of Order 561. 6/ The rehearing request is hereby denied.

II. DISCUSSION

The Producers claim that the Commonwealth did not demonstrate that the transfer was in the public interest and that DOE erred in relying on its determinations in Orders 368 and 368-A. In support of this position the Producers cite (1) the

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4/ The State Producer Associations are California Independent Petroleum Association, California Gas Producers Association, Independent Petroleum Association of Mountain States, Independent Petroleum Association of New Mexico, Louisiana Association of Independent Producers and Royalty Owners, Panhandle Producers and Royalty Owners Association and Texas Independent Producers and Royalty Owners Association.

5/ 1 FE 70,515.

6/ On February 19, 1992, Commonwealth filed a response to the Producers' rehearing request. FE regulations, 10 CFR 590.505, do not allow for answers to rehearing requests, and, therefore, Commonwealth's filing was not used as a basis for the decision in this Order.

decline in domestic natural gas drilling, and (2) the fact that the Repurchasers have 15-year contracts with their Canadian suppliers, but have committed to 20-year transportation agreements with their domestic pipeline transporter, Iroquois Gas Transmission System (Iroquois). The Producers' argument are not persuasive.

Generally, as we stated in the notice of application, DOE had already determined in Orders 368 and 368-A that the underlying import arrangement involved is competitive, needed and secure. DOE could properly rely on those determinations in making its public interest finding, and did so rely. Specifically, Producers fail to demonstrate how or why a decline in domestic natural gas rig counts (a decline which, incidentally, affects Canada as well) has any bearing on DOE's determination that the contract terms underlying the import arrangement are competitive. Further, DOE did not limit the import authorizations to terms of 15 years as implied by the Producers; the authorizations simply coincide with the length of the supporting supply contracts. The transportation arrangements between the Repurchasers and Iroquois (or any other pipeline) are a matter for the Federal Energy Regulatory Commission, and any discrepancy between the lengths of the supply and transportation contracts are not, as the Producers suggest, relevant to DOE's NGA section 3 decision.

Other issues raised by the Producers include denial of an evidentiary hearing, failure to permit discovery, making of

factual findings not supported by the record, permitting a less-than-arms length transaction harmful to the public interest, and not giving proper procedural treatment to the transfer request. All of these issues were dealt with in Order 561 and the Producers have not presented any new or compelling reasons for revisiting them.

III. CONCLUSION

DOE issued Order 561 after reviewing the record, and properly relying on the thorough examination of the underlying import arrangement conducted in conjunction with the issuance of Orders 368 and 368-A, and found the transfer of import authorization from Boston Gas to Commonwealth to be consistent with the NGA section 3 public interest standard. DOE determined that the import arrangement would provide additional, long-term, secure supplies of competitively priced natural gas to Commonwealth and is, therefore, not inconsistent with the public interest, including protection of the environment.

The application for rehearing filed by the Producers does not contain any basis for DOE to reconsider its findings in this proceeding. The Producers neither rebutted the substantial record on which these findings were based nor rebutted the statutory presumption in section 3 that natural gas imports are

consistent with the public interest. Therefore, the Producers request for rehearing is denied.

Issued in Washington, D.C. on February 20, 1992.

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Charles F. Vacek
Deputy Assistant Secretary
for Fuels Programs
Office of Fossil Energy