UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

PUBLIC SERVICE DEPARTMENT, THE CITY OF BURBANK, CALIFORNIA	FE DOCKET NO. 90-39-NG
PUBLIC SERVICE DEPARTMENT, THE CITY OF GLENDALE, CALIFORNIA	FE DOCKET NO. 90-40-NG
DEPARTMENT OF WATER AND POWER, THE CITY OF PASADENA, CALIFORNIA	FE DOCKET NO. 90-42-NG
SOUTHERN CALIFORNIA EDISON COMPANY	FE DOCKET NO. 90-43-NG
INVERNESS RESOURCES INC.	FE DOCKET NO. 90-45-NG
PACIFIC GAS AND ELECTRIC COMPANY	FE DOCKET NO. 90-46-NG
SAN DIEGO GAS AND ELECTRIC COMPANY	FE DOCKET NO. 90-47-NG
BP RESOURCES CANADA LIMITED	FE DOCKET NO. 90-49-NG

ORDER DENYING REQUEST FOR REHEARING
AND LATE MOTION TO INTERVENE

DOE/FE OPINION AND ORDER NO. 619-B

JULY 17, 1992

I. BACKGROUND

On May 19, 1992, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued DOE/FE Opinion and Order No. 619 (Order 619) 1/ granting eight separate applications for blanket authority to import natural gas from Canada into the United States over a two-year period. Order 619 was issued pursuant to DOE's delegated authority under section 3 of the Natural Gas Act 2/ and in accordance with the policies contained in the Secretary of Energy's 1984 guidelines 3/ addressing the importation of natural gas. The maximum volumes approved for import are (1) 3.8 Bcf for the Public Service Department, the City of Burbank, California; (2) 3.8 Bcf for the Public Service Department, the City of Glendale, California; (3) 3.8 Bcf for the Department of Water and Power, the City of Pasadena, California; (4) 146 Bcf for Southern California Edison; (5) 8 Bcf for Inverness Resources Inc.; 4/ (6) 73 Bcf for Pacific Gas and Electric Company; (7) 73 Bcf for San Diego Gas & Electric Company; and (8) 36.5 Bcf for BP Resources Canada Limited (collectively "Applicants").

The gas would be brought into the United States near Kingsgate, British Columbia, and delivered to the Pacific

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1/ 1 FE 70,579.

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

3/ 49 F.R. 6684, February 22, 1984.

4/ Inverness Resources Inc. is the successor to Pancontinental Oil Ltd.

Northwest and California markets using the added capacity from the proposed expansion of the pipeline systems of Pacific Gas Transmission Company (PGT) and its parent Pacific Gas and Electric Company (PG&E). The PGT/PG&E expansion facilities are expected to be in service November 1, 1993. 5/ However, the authorizations also included the use of existing capacity on the PGT/PG&E systems to import the gas.

As with hundreds of other arrangements of this type authorized under DOE's blanket import/export program for short-term and spot market transactions, Applicants were given advance approval to import these Canadian supplies under purchase contracts of two years or less. The two-year term of the authorizations begins on the date the first volumes are imported. Because of the dynamic nature of the spot market, it is DOE's policy to routinely grant blanket authorizations in advance of finalization of contracts. Accordingly, Applicants were not required to identify the sellers of the gas or the precise terms of the sale agreements. They need only do so in quarterly reports filed with DOE after the imports have been received.

On June 18, 1992, as supplemented June 30, 1992, El Paso Natural Gas Company (El Paso) acting with the State of New Mexico (collectively "Petitioners") filed a joint request for rehearing

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5/ The facilities expansion by PGT/PG&E is designed to enable new import deliveries of over 900,000 Mcf of Canadian gas per day. Thirty utilities, marketers and producers have subscribed

to capacity on the PGT/PG&E expansion project.

of Order 619. The Independent Petroleum Association of America (IPAA), joined by a group of state producer associations (collectively "Movants"), 6/ filed in all eight dockets a motion for leave to intervene nearly two years out-of-time and requests for discovery, a trial-type hearing and rehearing of Order 619. Southern California Edison Company protested Movants' attempt to intervene arguing that Movants failed to demonstrate good cause for lateness. For similar reasons, the municipal governments of the Cities of Burbank, Glendale, and Pasadena, California (collectively the "Municipalities"), joined in opposing Movants late intervention.

It is within the Agency's discretion to grant or deny Movants' motions to intervene. We find that Movants have failed to demonstrate good cause, much less extraordinary circumstances, to warrant granting their request for late intervention, and, accordingly, the request is denied. 7/

6/ The state producer associations are the California Independent Petroleum Association, California Gas Producers Association, 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.

7/ The applications were noticed in the Federal Register in the summer of 1990, with comments, protests and motions to intervene due on dates ranging from August 6, 1990, to October 17, 1990. Movants do not claim that they were unaware of the application. Their explanation of why they filed nearly two years after the due date for interventions is that they were not aware that Applicants would use their proposed blanket authorizations in

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II. Decision

In general, the issues raised on rehearing are simply a reformulation of arguments made previously by Petitioners. Their main contention in seeking rehearing is that the conclusions reached by DOE in Order 619 rely on presumptions of competitiveness, need, and security of the imported gas supply that are not supported by facts in the record.

Petitioners distinguish the eight import proposals as different from other blanket applications DOE has approved based on the assumption that the volumes financially underpin the PGT/PG&E facilities expansion. Recognizing that Applicants have obtained firm transportation service on the expansion facilities, Petitioners allege that they have a strong financial incentive to maximize their use of the contracted-for capacity. Hence, their purchases would be biased in favor of Canadian gas.

Petitioners contend that further inquiry is required to determine who would pay for the costs of expanding upstream

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7/(...continued)
long-term import arrangements on the expanded PGT/PG&E pipeline systems. This is not a persuasive reason for filing late and, it reflects an apparent failure of Movants to adequately examine the import applications. Nothing in the record supports the assertion, either expressly or by implication, that the short-term, spot market transactions which Applicants request blanket authority to conduct would supplant long-term import arrangements. To the contrary, the applicants have been negotiating long-term purchase contracts with Canadian producers. Indeed, the speculation by Movants is inconsistent with the recent applications separately filed by Municipalities for authorization to import natural gas from Canada under long-term agreements with Unigas Corporation.
57 F.R. 27454 (June 19, 1992).

pipeline facilities in Canada from which the new PGT/PG&E capacity will receive all of its gas and how those costs would be passed through. Since different cost allocation methods can affect the relative competitive positions of imported and domestic gas, Petitioners are concerned that the conduit Canadian pipeline companies should not be guaranteed fixed recovery of costs by U.S. distributors and consumers with respect to their transportation of gas earmarked for the PGT/PG&E expansion facilities--costs that domestic pipelines are at risk to recover in their commodity charges.

Petitioners also assert that DOE diminished the importance of the affiliate relationship among Alberta and Southern Gas Company (A&S), Alberta Natural Gas Company Limited (ANG), PG&E, and PGT, a relationship which they claim casts doubt that the imports would be competitive.

Petitioners assert further that DOE ignored the anticompetitive effect of actions planned by Canadian authorities regarding the sale of Canadian gas to the United States. Petitioners note specifically a recent regulatory decision by the National Energy Board of Canada (NEB) in the period since Order 619 was issued which pertains to exports to Northern California. Petitioners contend that the NEB's decision on June 16, 1992, regarding A&S prevents Northern California markets from receiving short-term supplies of Canadian gas over the PGT pipeline which

would displace existing higher-priced, long-term gas purchased by PGT from A&S and its supply pool of Canadian producers. 8/

DOE concludes that Petitioners' application for rehearing presents no facts or principles of law which warrant modification of Order 619. The reasons previously relied upon in granting the import applications continue to apply. Petitioners' position that these applications should be distinguished from prior blanket proceedings in determining competitiveness, need for the gas, and security of supply is not persuasive. Equally unconvincing is their claim that Order 619 is defective because it ignores the anticompetitive effect of actions by the NEB to manipulate the free negotiation of import prices and prevent short-term exports of gas from moving over PGT to Northern California. The actions of the NEB and DOE's authorization of short-term, blanket imports in these proceedings are not interdependent.

The decision to grant these authorizations without advance details regarding particular transactions and market need was entirely appropriate and fully consistent with DOE's established

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8/ On June 16, 1992, the NEB issued Orders MO-2-92 and TG-5-92 (1) to preclude exports at Kingsgate and Huntingdon, British Columbia of Canadian gas destined for the Northern California market that is not presently under contract by A&S for sale to PGT; and to immediately suspend interruptible transportation service for the delivery of gas to the Kingsgate export point and suspend capacity assignment provisions of ANG's transportation service tariff. The NEB stated that the ban on interruptible transportation will be lifted when existing supply contracts between PGT and the group of 190 A&S pool producers are either

honored or commercially restructured.

procedures. Petitioners ignore the fact that blanket import authorizations do not compel either a transaction or the import of natural gas. They merely provide the regulatory flexibility to seek competitive short-term or spot market gas sales and purchase opportunities in the marketplace. Parties to these transactions cannot be compelled to agree to contract terms that are not mutually satisfactory.

Petitioners attempt to draw a nexus between these blanket proposals and subscription to firm capacity on the proposed PGT/PG&E expansion facilities. Presumably, they are questioning the "purchasing practices" of Applicants. However, Petitioners' argument that Applicants would purchase spot-market Canadian gas even when domestic supplies are available at a lower unit cost solely to maximize capacity utilization on the PGT and PG&E systems is unsupported and ignores the existence of long-term gas purchase contracts negotiated by Municipalities and the other Applicants who intend to use the expansion facilities (PG&E currently is not an expansion project shipper). In this regard, DOE takes official notice that in May 1992 the NEB approved the application of ANG to expand its pipeline system which connects downstream with the PGT system. As indicated in the NEB's GHW-2-91 Reasons for Decision, gas supply arrangements are in place for 24 of the PGT/PG&E expansion project shippers. Generally, shippers have executed gas purchase contracts varying in length from six to fifteen years. It is expected that those shippers

other than the Municipalities who have not yet applied to DOE for their longer-term import approvals will apply shortly. Since long-term supply arrangements either have been or are being negotiated by Applicants, it is reasonable to assume the transactions contemplated under the two-year blanket authorizations merely provide them additional flexibility to use their transportation capacity to (1) access gas should there be an interruption of long-term supplies, (2) diversify their sources of supply, (3) achieve short-term cost savings, or (4) provide supplemental supply capability when the total capacity held is not being used by long-term import arrangements.

DOE rejects Petitioners' assertion that Order 619 is flawed because no effort was made to determine how the construction cost of expanding pipelines and gas-gathering systems in Canada would be passed through. Questions involving short-term or spot market applications that focus on the specific pricing structure and terms under which an applicant will eventually import gas cannot be answered until transactions actually commence under the authorization and reports of any such terms are filed. This is equally applicable in the instant cases. In any event, the basis for Petitioners' concern is somewhat illusory. There is no evidence that a particular rate structure will be employed. Thus, Petitioners' concern is not grounded in fact, but rather in speculation.

Finally, DOE disagrees that the import authorizations must be particularly scrutinized because of the affiliate relationships of A&S, ANG, PGT, and PG&E. Petitioners' assertion is irrelevant to seven of the eight Applicants. The potential that affiliate transactions would be unduly preferential or that they would not be market-based only relates to PG&E's import authority, and Petitioners have raised this issue without producing any concrete evidence, as they must, that would demonstrate PG&E's proposed blanket import arrangements will be anticompetitive. Furthermore, contrary to Petitioners' suggestion, there is no information that TransCanada PipeLines Limited (TransCanada) is no longer committed to acquiring PG&E's interest in PGT. Although the purchase of PGT by TransCanada may be moving at a slower pace than contemplated by their agreement-in-principal made in September 1991, TransCanada still holds a right of first refusal with PG&E. Also, ANG is no longer an affiliate of PG&E. TransCanada now holds an equity share in ANG after buying PGT's 49.9 percent control block of common stock. 9/

9/ Natural Gas Week, July 6, 1992.

ORDER

For the reasons set forth above, pursuant to section 3 and 19 of the Natural Gas Act, it is ordered that:

A. The application of El Paso Natural Gas Company and the New Mexico Department of Energy, Minerals, and Natural Resources and the New Mexico State Land Office for rehearing is hereby denied.

B. The late motion to intervene filed by the Independent Petroleum Association of America and the State Producers Associations is denied.

Issued in Washington, D.C., on July 17, 1992.

James G. Randolph
Assistant Secretary for Fossil Energy