

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
ECONOMIC REGULATORY ADMINISTRATION

_____))
COLUMBIA LNG CORPORATION))
CONSOLIDATED SYSTEM LNG))
COMPANY)) ERA DOCKET NO. 79-14-LNG
SOUTHERN ENERGY COMPANY))
_____)

PRE-HEARING ORDER

On May 18, 1979, Columbia LNG Corporation (Columbia LNG), Consolidated System LNG Company (Consolidated LNG), and Southern Energy Company (Southern Energy) - collectively, "Applicants" - filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting that ERA (1) amend previous orders authorizing importation of liquefied natural gas (LNG) from Algeria; 1/ and (2) approve amendments to contracts associated with such imports and approve new import prices for the LNG consistent with the amendments. The application was filed with ERA pursuant to Section 3 of the Natural Gas Act, Sections 301 and 402(f) of the DOE Organization, and DOE Delegation Orders Nos. 0204-4 and 0204-25.

On June 13, 1979, ERA issued a notice of receipt of the application (44 FR 36094, June 20, 1979).

On August 22, 1979, ERA issued an order approving part of the application - namely, the interim price of \$1.15 per MMBtu (F.O.B. Arzew, Algeria), to be effective retroactively as of July 1, 1979, through December 31, 1979. 2/ The order also granted all petitions for intervention submitted as of that date and stated the need for ERA to hold a pre-hearing conference in order to obtain additional information before deciding whether to grant further price adjustments and other relief sought in the application.

1/ Columbia LNG Corporation, et al., Opinion No. 622
47 FPC 1624, as modified on rehearing by Opinion No. 622-A, 48 FPC 723 (1972); further modified by FPC Order issued July 27, 1977 (FPC Docket Nos. CP71-78, CP71-151, CP71-153) and ERA Order issued May 8, 1979 (ERA Docket No. 78-007-LNG).

2/ "Order Approving in Part an Application for Amendments to Import Authorization and for Interim Relief, and Granting Intervention", August 22, 1979, ERA Docket No. 79-14-LNG.

On September 4, 1979, the Administrator of ERA delegated to the Deputy Administrator for Policy authority to hear and decide all issues in this proceeding.

On September 14, 1979, the ERA held a pre-hearing conference in Washington, D.C., to determine whether there were any factual issues in dispute which would require an evidentiary hearing and, if so, what procedures should be adopted for the hearing. Other issues, including the procedures to be used if an evidentiary hearing was not needed, were also discussed with the parties.

After a careful review of the statements presented at the pre-hearing conference, the petitions for intervention in this proceeding, and all other documents submitted by the parties, ERA has determined that it is necessary and appropriate to hold an evidentiary hearing. While ERA is cognizant of and sensitive to the desire of the applicants for an expeditious decision in this matter, we believe that procedural due process requires that an evidentiary hearing be held. It is our intention, however, that the hearing and all ancillary matters be scheduled so as to permit a final decision by December 31, 1979.

A. Interveners

Subsequent to the August 22 order, three petitions for intervention were filed with ERA. The petitioners were allowed to participate in the pre-hearing conference. ERA believes that they have demonstrated concerns and interests not adequately represented by other parties to this proceeding; and that the late filing of these petitions has not adversely affected this proceeding. Accordingly, F. J. Dando Company, et al. (August 28, 1979); Pennsylvania Oil & Gas Association (POGAM) and Independent Oil & Gas Association of West Virginia (IOGA) (September 5, 1979); and, Consumer Federation of America and Consumer Energy Council of America (September 14, 1979), will be granted intervention, subject to the same conditions imposed on interventions granted in the August 22 order. 3/

3/ ERA notes the objections raised in the Joint Answer of Columbia LNG and Columbia Gas in Opposition to Joint Petition for Leave to Intervene and For Other Relief of the Pennsylvania Oil & Gas Association and the Independent Oil & Gas Association of West Virginia (September 21, 1979), but finds that they are outweighed by the merits of the participation of POGAM and IOGA in this proceeding.

B. Issues of Fact

Upon review of statements made by participants in the pre-hearing conference, ERA has identified the following as issues of fact which some of the parties have indicated they may contest and on which evidence therefore may be submitted: 4/

1. Is the proposed LNG price reasonable, particularly in light of prices of alternate energy supplies, including domestic and other proximate sources of natural gas?
 - a. Are reasonably-priced alternate supplies available in sufficient quantities to replace this gas supply?
 - b. Are the alternate energy supplies available in the appropriate time period?
 - c. What would be the effects of disapproval of the contract amendment on the applicants, their supplier and customers, and the end-users of this gas supply?
2. Is the proposed escalator reasonable?
 - a. Is the use of Platt's Oilgram price indices reasonable?
 - b. Does the formula based on increases in the price of No. 2 and No. 6 low sulfur fuel oil in New York Harbor accurately reflect the cost of alternative energy sources in the areas served by the applicants (if that is a contention upon which the applicants rely)?
3. Is there a reasonable basis for amending the contract (assuming, as the applicants asserted at the pre-hearing conference, that the original contract is binding on the supplier at the current price)?

4/ The subissues listed under the five principal issues are intended to be illustrative.

- a. If the applicants are relying on the supplier's increased costs as a basis for amending the contract, what are those increased costs and what relationship do they have to the proposed price increase?
 - b. Are there factors other than increased costs to the supplier which warrant an increased price?
 - c. What benefits will the public derive from approval of the amended contract?
4. What will be the impact of the price proposed by the applicants on U.S. balance of payments?

With respect to issues 1 through 4 above, the burden is on the applicants to demonstrate that approval of the application is not inconsistent with the public interest as required by Section 3 of the Natural Gas Act.

In addition to the foregoing issues of fact, we note that one of the parties 5/ raised at the pre-hearing conference the possibility that it might assert that the gas at issue here should be incrementally priced. In previous decisions the ERA has stated a preference in some circumstances for requiring the importers of LNG to contract for sale of the regasified LNG directly to distribution companies, 6/ which amounts to a form of incremental pricing to distribution companies. In addition, Section 207 of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301, et seq., gives the DOE authority to require imported natural gas to be incrementally priced in certain specified circumstances (which may or may not be present here). It may also be argued that the ERA has separate authority under Section 3 of the Natural Gas Act to order incremental pricing. Therefore, it is appropriate in this proceeding for any party to advocate the incremental pricing of the gas and to submit evidence supporting that position. The burden will be on those advocating incremental pricing to demonstrate that such pricing is practicable and in the public interest. Among the factual issues that should be addressed by any party advocating incremental pricing are the following:

5/ Public Counsel of Maryland.

6/ See ERA Opinion Number Three, pp. 52-53 and Opinion Number Four, pp. 49-50.

- a. Would this gas clear the market if it were incrementally priced?
- b. What would be the effect of incremental pricing on end-users?

C. Discovery

ERA finds that limited discovery, as requested by several participants in the pre-hearing conference, would expedite full development of the record and final decision on this application. In order to expedite discovery as much as possible, return on discovery requests will be made at a discovery conference, to be presided over by an ERA official, at which time an attempt will be made to resolve all outstanding issues relating to discovery.

D. DOE Staff Participation

In ERA proceedings to date involving the importation or exportation of natural gas, DOE staff has not participated as a separate party, in contrast to the FERC practice where staff submits independent evidence, cross-examines witnesses of other parties and advocates its own position on the issues. ERA has not followed the FERC practice primarily because all available staff familiar with the issues have advised the Administrator or his delegate in arriving at a final decision.

DOE staff will continue to play an advisory role to the presiding official in this proceeding. However, in the interest of providing all parties with notice of and an opportunity to comment on staff analysis that may be relevant to the final decision, DOE staff, represented by counsel from the Office of General Counsel, may participate in this proceeding as though it were a party for the limited purpose of presenting witnesses and documentary evidence and by cross-examining other parties' witnesses. DOE staff shall therefore serve and be served with prepared testimony and other documents as though it were a party. However, in order that DOE staff may also continue to play an advisory role to the decision maker, it shall be precluded from filing briefs or otherwise taking an advocacy position on any issue, and such staff as shall be involved in such an advisory role shall observe the same rules regarding ex parte communications as are applicable to the decision maker. Failure of DOE staff to present particular documents or information as evidence shall not preclude the decision maker from taking official notice of them if it is otherwise appropriate to do so.

E. Reliance on the FPC Record in this Proceeding

Technically, the record developed by the Federal Power Commission (FPC) in Docket Nos. CP71-68, et al., is part of the record in this proceeding and may be relied upon by the parties and the decision maker in this proceeding. The Federal Energy Regulatory Commission (FERC), which has custody of most FPC records, is unable to locate most of the original record, but has a duplicate file which it intends to certify to the ERA as at least a portion of the original record. The duplicate file can be inspected at the office of Richard Eibel, Room 7312C, Office of Pipeline and Producer Regulations, FERC, 825 North Capitol Street, N.E., Washington, D.C. 20426. If a party intends to rely on testimony or an exhibit which it believes was part of the original record but which is not part of the duplicate file, it must submit such testimony or exhibit as part of its direct or rebuttal testimony in this phase of the proceeding.

F. Modifications of this Pre-Hearing Order

Any party may file motions for modification of this order on or before October 2, 1979. Motions filed after that date may be denied as being filed out of time unless they raise matters which the parties filing such motions could not have been cognizant of by October 2.

ORDER

A. Intervenors and Participation of DOE Staff

1. F. J. Dando Company, et al. (August 28, 1979); Pennsylvania Oil & Gas Association (POGAM) and Independent Oil & Gas Association of West Virginia (IOGA) (September 5, 1979); and, Consumer Federation of America and Consumer Energy Council of America (September 14, 1979), are hereby granted intervention, subject to such rules of practice and procedure as may be in effect, provided that the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in their petitions to intervene and provided further that the admission of such intervenors shall not be construed as recognition by ERA that they or any one of them might be aggrieved because of any order issued by ERA in this proceeding.

2. The DOE staff, represented by the Office of General Counsel, may participate in this proceeding for the limited purpose of presenting evidence and cross-examination of other parties' witnesses, but shall not advocate any particular position on the issues. Nothing in this order shall prohibit any member of DOE staff who participates in this proceeding in the above-described manner from also advising the presiding official on decisions in this proceeding.
3. The Appendix to this order contains (1) the names of the petitioners granted intervention, herein, including the names and mailing addresses of individuals designated by them to receive service on their behalf, and (2) the name and mailing address of the individual designated to receive service on behalf of DOE staff. The Appendix shall constitute an addendum to the official service list in this proceeding.

B. Discovery

1. Discovery will be limited to service of written interrogatories and written requests for the production of documents.
2. All discovery requests shall be served on all parties no later than 4:30 p.m., e.s.t., on October 2, 1979.
3. A discovery conference will be held beginning at 10:00 a.m., e.s.t., on October 9, 1979, in Room 2105, 2000 M Street, N.W., Washington, D.C. 20461. The discovery conference will, inter alia, consider objections to discovery requests.
4. All returns on discovery requests by way of response to interrogatories and production of documents shall be personally served on the parties present at the discovery conference and by mail on the same date to all other parties.
5. All objections to discovery requests shall be made in writing and personally served on all the parties present at the discovery conference and by mail on the same date to all other parties.

6. All objections to discovery requests will be ruled on at the discovery conference or as soon thereafter as possible.

C. Submission of Written Testimony

1. All direct and rebuttal testimony shall be submitted in the form of sworn written testimony.
2. Prepared direct testimony and exhibits shall be served and filed no later than 4:30 p.m., e.s.t., October 19, 1979.
3. Any prepared testimony and exhibits heretofore filed which a party wishes to be included in the record as direct testimony shall be served upon all the parties and filed no later than 4:30 p.m., e.s.t., October 19, 1979. Parties upon whom such prepared testimony and exhibits have already been filed shall be served with notice of intent to use such prepared testimony and exhibits as direct testimony.
4. All prepared rebuttal testimony and exhibits shall be served and filed no later than 4:30 p.m., e.s.t., October 26, 1979.
5. If any party intends to rely upon the record in FPC Docket Nos. CP71-68, et al., a copy of the portion of the record to be relied upon shall be served and filed as an exhibit in this proceeding.

D. Stipulations

The parties are encouraged to confer among themselves in order to agree upon stipulations of fact. Such stipulations will, we believe, focus the evidentiary hearing on those issues genuinely in dispute and will expedite decision in this matter.

1. All stipulations of fact between or among parties to this proceeding shall be served and filed no later than 10:00 a.m., e.s.t., October 30, 1979, at the opening of the evidentiary hearing.

2. Any objections to stipulations filed shall be made orally at the opening of the hearing. The presiding officer shall rule on such objections at the evidentiary hearing.

E. Hearing

1. An evidentiary hearing in this matter will commence at 10:00 a.m., e.s.t., on October 30, 1979, Room 2105, 2000 M Street, N.W., Washington, D.C. 20461.
2. The presiding officer will be Douglas G. Robinson, Deputy Administrator for Policy of the Economic Regulatory Administration.
3. Oral direct testimony will be presented in the following sequence:
 - a. Applicants
 - b. El Paso Algeria
 - c. Sonatrach
 - d. Other interveners, in alphabetical order, as determined by the list of interveners in this proceeding.
 - e. DOE staff.
4. Cross examination will be permitted in the same order as described in paragraph 3.
5. Redirect and re-cross examination may be permitted at the discretion of the presiding officer.

F. Applicable Rules

These proceedings will be conducted in accordance with the FERC Rules of Practice and Procedure, as amended by this order and such other rules or orders as shall have been issued by ERA.

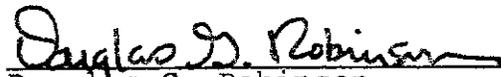
G. Modifications to this Order

1. Requests for modification of this order shall be filed with the ERA no later than 4:30 p.m., e.s.t., October 2, 1979.

H. Miscellaneous

1. As used herein, "party" or "parties" includes the applicants, all persons authorized to intervene in this proceeding and the staff of the Department of Energy.
2. As used herein "serve" or "service" means service by mail or by personal delivery to all parties and filing with the ERA Docket Room, Room 4126, 2000 M Street, N.W., Washington, D.C. 20461.

Issued in Washington, D.C., on September 24, 1979.



Douglas G. Robinson
Deputy Administrator for Policy
Economic Regulatory Administration

Appendix