Cited as "1 ERA Para. 70,631"

CPEX Pacific, Inc. (ERA Docket No. 85-26-NG), February 21, 1986.

DOE/ERA Opinion and Order No. 98A

Order Denying Rehearing

I. Background

On December 20, 1985, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued DOE/ERA Opinion and Order No. 98 1/ (Order No. 98) granting CPEX Pacific, Inc. an authorization to import on an interruptible, best-efforts basis up to 10,000 Mcf per day of Canadian natural gas for use in its chemical plant near St. Helens, Oregon.

II. Application for Rehearing

The Panhandle Producers and Royalty Owners Association, et al.2/ (PPROA) filed an application for rehearing of Order No. 98 on January 21, 1986. PPROA is made up of associations that represent the interests of royalty owners and service companies in Texas, New Mexico, Oklahoma, and Kansas who are dependent upon gas sales to interstate pipelines. PPROA argues that the ERA erred in refusing to conduct a trial-type hearing in ERA Docket No. 85-26-NG since it alleges that there were outstanding material issues of disputed fact in the proceeding. Further, PPROA argues that the ERA, through its application of the DOE natural gas import policy guidelines 3/ has improperly shifted the burden of proof from the applicant to the intervenors. PPROA also requests that the ERA incorporate by reference its application for rehearing in ERA Docket No. 85-14-NG. PPROA claims that the reasons it set forth in that docket should compel the ERA to hold a trial-type hearing in this proceeding.

III. Decision

PPROA argues three bases of error to support its request for rehearing in this proceeding. First, to support its allegation that the ERA erred in not granting a trial-type hearing, PPROA requests incorporation by reference of those reasons stated in its application for rehearing 4/ of DOE/ERA Opinion and Order No. 88.5/ The requested incorporation is denied. PPROA has exhausted its administrative remedies in ERA Docket No. 85-14-NG and it cannot continue to argue that case in other dockets involving different factual circumstances. The application in ERA Docket No. 85-14-NG was for a blanket authorization for short-term spot sales and this application is for a direct sale to an

individual user.

The ERA has carefully reviewed the requests and comments of PPROA in its previous motions to intervene and request for rehearing. To the extent arguments and issues raised in the earlier docket logically could be applied to the different factual setting of this proceeding, PPROA has presented no evidence of disputed material fact in this proceeding related to such issues to convince us to reconsider our previous opinions in this docket.

Second, PPROA claims that the ERA has improperly shifted the burden of proof from the applicant to the intervenors. This is not true. Section 3 of the NGA requires that an import be authorized unless "the proposed importation will not be consistent with the public interest."6/ Thus, the statute establishes a presumption in favor of authorization, but allows the DOE to exercise its discretion in determining the public interest. In exercising this discretion, the DOE identified competition as the cornerstone of this statutory standard.7/ This approach presumes that the gas imported under agreements responsive to market demands meets the public interest test, and that the parties, if permitted to negotiate free of government constraints, will enter into competitive import arrangements that will meet their needs and will be responsive to market forces over their term. The guidelines and the ERA's administrative procedures direct the intervenors to inform the DOE if they feel that the import is not in the public interest, and to provide evidence to support this position. In this case, where an industrial user has made a business decision to enter directly into a contract with a Canadian supplier to meet its energy needs, PPROA has failed to provide evidence to show why such a direct import is not in the public interest.

Finally, PPROA alleges that the ERA has failed to consider the cumulative impact of the application in light of numerous other import authorizations recently granted by the ERA. The ERA has considered that impact. The DOE has determined that freely negotiated, market-responsive arrangements for the purchase of natural gas enhances competition in the marketplace and benefits consumers and the long-term health of the gas industry.

IV. Conclusion

The ERA has determined that PPROA's request for rehearing presents no information that would merit reconsideration of our findings in Order No. 98. Therefore, PPROA's request for rehearing is denied.

Order

For the reasons set forth above, pursuant to Section 19(a) of the Natural Gas Act, it is ordered that:

The application of Panhandle Producers and Royalty Owners Association et al. for rehearing of DOE/ERA Opinion and Order No. 98 is hereby denied.

Issued in Washington, D.C., on February 21, 1986.

--Footnotes--

1/ 1 ERA Para. 70,616 (December 20, 1985).

2/ PPROA includes the Panhandle Producers and Royalty Owners Association, the West Central Texas Oil and Gas Association, the North Texas Oil and Gas Association and the East Texas Producers and Royalty Owners Association.

3/ 49 FR 6684, February 22, 1984.

4/ Application for Rehearing and Request for Stay by the Panhandle Producers and Royalty Owners Association, October 28, 1985.

5/ Northridge Petroleum Marketing U.S., Inc., 1 ERA Para. 70,605 (September 27, 1985).

6/ 15 U.S.C. Sec. 717(b).

7/ See supra note 3, at 6687.