

Cited as "1 ERA Para. 70,130"

Phillips 66 Natural Gas Company; Marathon Oil Company (ERA Docket No. 88-22-LNG), July 28, 1988.

DOE/ERA Opinion and Order No. 261

Order Amending Authorization To Export Liquefied Natural Gas To Japan

I. Background

On April 11, 1988, Phillips 66 Natural Gas Company (Phillips 66) and Marathon Oil Company (Marathon) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act (NGA), requesting approval of a 15-year extension and modification of their existing authorization to export liquefied natural gas (LNG) from the Kenai peninsula of Alaska to Japan.

The LNG export authorization held by Phillips 66 and Marathon was granted originally by the Federal Power Commission on April 19, 1967 (37 FPC 777), and was subsequently amended by DOE/ERA Opinion and Order No. 49 (1 ERA Para. 70,116, December 14, 1982); DOE/ERA Opinion and Order No. 49A (1 ERA Para. 70,127, April 3, 1986); and DOE/ERA Opinion and Order No. 206 (Order 206) (1 ERA Para. 70,128, November 16, 1987). The applicants currently are authorized to export annually through May 31, 1989, up to 50.57 trillion Btu's of LNG from the Kenai LNG plant in the Cook Inlet area of Alaska to two Japanese customers, the Tokyo Electric Power Company, Inc., and the Tokyo Gas Company, Ltd. Order 206 approved application of the following pricing formula to these LNG sales:

$$\begin{array}{l} \text{Avg. selling price} \\ \text{(month prior to} \\ \text{Price for Calendar month)} \\ \text{Calendar month)} = 592.8 \times \frac{\text{-----}}{34.48} + \text{Adjustment} \end{array}$$

Where: average selling price is the weighted average official price in U.S. dollars per barrel for the top 20 crude oils imported into Japan in the previous year and sold on a term basis.

adjustment is an adjustment required to keep the price of Alaskan LNG competitive with other sales of LNG in the Japanese market (the adjustment changes as frequently as market conditions require or on request of either party).

Phillips 66 and Marathon request the ERA to extend their export

authorization under modified terms through March 31, 2004, in accordance with an agreement in principle reached between themselves and their Japanese buyers. The agreement reflects four principal changes to the contractual arrangement currently authorized by Order 206. First, the contract year has been changed from a twelve-month period beginning June 1 to a twelve-month period beginning April 1. Second, the pricing formula set forth above has been amended to limit the presently unspecified "adjustment" factor to a range of 30.0 cents (plus or minus) per MMBtu. Third, commencing April 1, 1989, the annual contract quantity (ACQ) has been increased from 50.57 trillion Btu's per year to 52.0 trillion Btu's per year. This quantity will increase to 57.5 trillion Btu's per year beginning in the first contract year in which applicants place larger LNG tankers into operation for the entire contract year. According to the application, an increase to 57.5 trillion Btu's is likely to occur for the contract year commencing April 1, 1993. Fourth, buyers may request additional deliveries up to a maximum of 6 percent of the ACQ, as increased above, during any contract year.

In support of their application, Phillips 66 and Marathon state that extension of the export would continue the beneficial impact of the project on the economy of the State of Alaska and on the balance of payments between the United States and Japan. The applicants also state that, in light of the current natural gas surplus in Alaska and in the lower-48 states, there is no evidence of either regional or national need for the gas proposed to be exported. The applicants included as part of their application an analysis of the economic impacts of the proposed export prepared by Dames & Moore (D&M). Further, they assert that the pricing formula will continue to provide parties with the flexibility to respond to market conditions and therefore is consistent with ERA policy.

The ERA issued a notice of this application on May 16, 1988, inviting protests, motions to intervene, notices of intervention, and comments to be filed by June 20, 1988.¹ No protests, motions to intervene, or notices of intervention were received.

II. Decision

The application filed by Phillips 66 and Marathon has been evaluated to determine if the proposed export arrangement meets the public interest requirements of Section 3 of the NGA. Under Section 3 an export must be authorized unless ERA finds that it "will not be consistent with the public interest."² In reviewing natural gas export applications, the ERA considers the domestic need for the gas to be exported, and any other issues determined by the Administrator to be appropriate in a particular case.

Phillips 66's and Marathon's proposed amendment to their arrangement for the export of liquefied natural gas, as set forth in the application, is not

inconsistent with Section 3 of the NGA. Our decision takes into account the absence of opposition to the proposed extension and modification and is based on the findings discussed below.

Applicants contend that there is no evidence of either national or regional domestic need for the natural gas affected by the requested amendment. Gas is currently in surplus both in Alaska and the lower-48 states. The LNG cannot be delivered to the lower-48 states at market-clearing prices primarily because of high shipping costs to the East and Gulf Coasts, and because the Pacific Coast lacks LNG receiving facilities and none are anticipated to be constructed within the 15-year extension. With respect to regional need, even with anticipated greater local demand, applicants estimate that ample gas reserves will remain at the end of the 15-year extension. Relying on the record, including the uncontested assertions of Phillips 66 and Marathon, and the D&M study submitted as part of their application, ERA finds that there is no domestic need for the gas involved in this export over the term of the extended authorization.

In addition, we find this export arrangement to be in accord with the DOE's international gas trade policy. The project has been successfully exporting LNG since 1969. Its continuation will contribute favorably to the U.S. balance of payments and further reduce trade barriers. Its approval underscores our market approach to trade, including a reduction in government intervention. The proposed amendment has been negotiated by the parties to the export and the ERA continues to believe, as emphasized in Order 206, that "allowing free operation of market forces . . . will be the best means for fostering the development of more effective and efficient gas trade between the U.S. and other countries and ensuring protection of the public interest." The ERA notes that the pricing formula, amended to specify a previously unspecified adjustment range, continues to provide the parties with the flexibility to respond to market conditions.

After taking into consideration all of the information in the record of this proceeding, I find that approving the proposed amendment, as requested by the joint applicants, is not inconsistent with the public interest.^{3/}

ORDER

For the reasons set forth above, pursuant to Section 3 of the Natural Gas Act, the Economic Regulatory Administration (ERA) hereby orders that:

A. DOE/ERA Opinion and Order No. 49 (Order 49), issued to Phillips Petroleum Company, the predecessor of Phillips 66 Natural Gas Company (Phillips 66), and Marathon Oil Company (Marathon) on December 14, 1982, as amended by Opinion and Order No. 206, issued to Phillips 66 and Marathon on November 16, 1987, is hereby further amended to extend the export

authorization term through March 31, 2004, under the modified terms described in the application and this Opinion.

B. Order 49 is further amended to require Phillips 66 and Marathon to file with ERA within 30 days following each calendar quarter, reports indicating the volume of gas, by month, exported pursuant to this Order and the average sale price of this gas on a per unit (MMBtu) basis. This amendment supersedes Paragraph D of Order 49 and is effective upon issuance of this Order.

Issued in Washington D.C. on July 28, 1988.

--Footnotes--

1/ 53 FR 18119, May 20, 1988.

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

3/ Because the proposed 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.