

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

Phillips Alaska Natural Gas Corporation)
and)
Marathon Oil Company) **FE Docket No. 99-110-LNG**

**ORDER GRANTING BLANKET AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS
FROM ALASKA**

DOE/FE OPINION AND ORDER NO. 1580

APRIL 10, 2000

I. Background

On December 16, 1999, Phillips Alaska Natural Gas Corporation (PANGC) and Marathon Oil Company (Marathon) jointly filed an application with the Department of Energy's (DOE) Office of Fossil Energy for blanket authorization to export up to 10 trillion British thermal units (TBtus)^{1/} of liquefied natural gas (LNG) from the Applicants' existing Kenai LNG facilities in the Cook Inlet area of Alaska to the Pacific Rim.^{2/} The proposed exports are intended for short-term or spot sales over a two-year period beginning on the date of first delivery. Previous blanket authority held by the Applicants to export the same volume of LNG to the Pacific Rim expired March 24, 1999.^{3/} The Applicants used that authority only once, on March 25, 1997, exporting a total of 0.1 Bcf of LNG to Japan.

The Applicants have maintained an uninterrupted export relationship with Japan for more than 30 years pursuant to a series of orders issued by DOE and its predecessors. They presently hold long-term authority, recently extended for five years through March 31, 2009, by DOE/FE Opinion and Order No. 1473 (Order 1473),^{4/} to export up to 64.4 Bcf annually to Japan, for sale to The Tokyo Electric Power Company, Incorporated (Tokyo Electric) and Tokyo Gas Company,

^{1/} One TBtu is equal to approximately one billion cubic feet (Bcf).

^{2/} PANGC, a Delaware corporation with its principal place of business in Bartlesville, Oklahoma, is a wholly owned subsidiary of Phillips Petroleum Company. Marathon, an Ohio corporation with its principal place of business in Houston, Texas, is a wholly owned subsidiary of USX Corporation. The Applicants are not affiliated with each other. They own and operate natural gas liquefaction and marine terminal facilities at Kenai, Alaska.

^{3/} 1 FE ¶ 70,777.

^{4/} 2 FE ¶ 70,317.

Ltd. (Tokyo Gas). This quantity is about 36 percent of the 1998 market for natural gas produced from Alaska's Cook Inlet basin.^{5/}

According to the Applicants, the Kenai facilities can at times manufacture LNG in excess of the volume required by current long-term sales arrangements with Tokyo Electric and Tokyo Gas and exported under the Applicants' long-term authority. They would like to make this additional LNG available to existing as well as other international markets. Transactions under the requested authority would be negotiated at arms length and would contain flexible, market-responsive terms. The Applicants anticipate that the price would be subject to monthly adjustment, based on market conditions and available competing fuels, but might also be fixed for a term less than two years. Contracts are expected to provide for termination by either party on short notice.

The gas used to manufacture the LNG would come from the Applicant's production in the Cook Inlet basin, or from other Alaska suppliers, and would be incremental to the needs of current domestic purchasers.^{6/} The Applicants also indicate the proposed exports would not require the construction of additional facilities.

II. Notice and Comments

The DOE issued a notice of the application on January 6, 2000, inviting protests, motions to intervene, notices of intervention, and comments.^{7/} A protest and motion to intervene was filed by Union Oil Company of California (Unocal) on February 11, 2000. Unocal argues the export

^{5/} See Alaska Department of Natural Resources, Division of Oil and Gas, *Historical and Projected Oil and Gas Consumption*, May 1999, p.35.

^{6/} Phillips Petroleum Company and Marathon have been significant operators in the Cook Inlet area for decades. They operate three of the basin's six largest fields and control approximately 48 percent of the basin's reserves.

⁷ 65 Fed. Reg. 1856 (January 12, 2000).

request is not consistent with the public interest and should be denied. The Applicants answered Unocal's motion on February 24, 2000. The DOE also received a letter on February 2, 2000, from the Commissioner of the Department of Natural Resources for the State of Alaska. The State does not protest or intervene in the proceeding, but "reserves th[is] right" if the Applicants seek additional export authority. This Order grants intervention to Unocal.

Unocal is a California corporation with diversified energy operations worldwide. Unocal indicates it is the largest leaseholder in Cook Inlet, and operates properties producing an average of approximately 45 percent of the region's natural gas production. It supplies feedstock natural gas to Alaska Nitrogen Products, LLC (ANP) for the manufacture of nitrogen-based fertilizers at ANP's chemical plant located in Nikiski on the shore of Cook Inlet.^{8/} Unocal says the plant accounted for 25 percent of demand for gas produced in the Cook Inlet, and roughly 40 percent of Cook Inlet gas consumed in Alaska in 1998.^{9/} Except for the fertilizer plant, Unocal has no other supply obligations to the local Alaskan market.

Unocal incorporated by reference in this proceeding all comments and analyses^{10/} it submitted in support of its protest and intervention in the 1996 docket for Order 1473. In that

8 ANP is a subsidiary of Unocal. Unocal recently agreed to sell ANP to Agrium, Inc., including the Nikiski fertilizer plant. Agrium, Inc. is a Canadian corporation with its principal place of business in Calgary, Alberta, Canada. It produces and markets fertilizer in North America and Argentina. Under the completed sale, Unocal will be obligated to supply the natural gas requirements of Agrium, Inc.'s plant on a long-term basis.

9 By comparison, Unocal indicates utility gas and power generation accounted for 28 percent of south-central Alaska's gas demand, while the Applicants' LNG exports to Japan accounted for 36 percent. See note 4. South-central Alaska includes the City of Anchorage, the Matanuska-Susitna Borough, and the Kenai Peninsula Borough. Its inhabitants comprise the majority of Alaska's population.

^{10/} *Cook Inlet Natural Gas Deliverability Analysis* (December 1997), included as Exhibit A to *Initial Comments of Union Oil Company of California* (Unocal), filed December 22, 1997. Unocal's deliverability report was supported by two companion analyses, also prepared by Unocal and included as Appendices 1 and 2, respectively, to Exhibit A: (1) *Cook Inlet Natural Gas Reserves and Resources*; and (2) *Production Capacity of Cook Inlet Gas Fields*.

docket Unocal argued the five-year extension requested by the Applicants would cause, or at least hasten, daily and annual regional supply shortfalls, including curtailments affecting its subsidiary's fertilizer plant, within the 2004-2009 extension period. Unocal argued its analysis showed a declining natural gas reserve base in Cook Inlet, which, even with reserve additions, would be insufficient to meet both the projected demand in south-central Alaska and the LNG export market. Although it is this extension to the PANGC and Marathon long-term export authority, not the short-term blanket authority sought in this docket, which Unocal claims is the "real threat" to Alaska gas users, Unocal believes the Department's approval of the current request will accelerate supply shortfalls.

In their February 24, 2000, answer to Unocal's motion and comments, the Applicants emphasized the Department's determination in Order 1473, based on the extensive record in that proceeding, that the extension of their long-term export authority had not been shown to be inconsistent with the public interest, and that "even using the supply and demand estimates of the protesters, . . . supply is more than sufficient to meet demand."^{11/} The Applicants dismiss Unocal's protest as "simply a collateral attack" on Order 1473 and one wherein Unocal has failed to meet its burden of proof in the current proceeding. The Applicants also note the Department's comment in Order 1473 that protestors, by seeking to manipulate the process in order to eliminate the LNG export demand segment of the market, were attempting "to obtain, in effect, a private right of eminent domain" to take the gas from the exporting producer.^{12/}

11 Order 1473 at 46.

12 *Id.* at 47.

III. Decision

This application has been evaluated to determine if the proposed export arrangement meets the public interest requirements of section 3 of the Natural Gas Act (NGA).^{13/} Under section 3, an export from Alaska to a foreign country must be authorized unless there is a finding it “will not be consistent with the public interest.”^{14/} Section 3 thus creates a statutory presumption in favor of approval of this export application which opponents bear the burden of overcoming.^{15/} Furthermore, in evaluating an export application, the Department applies the principles described in DOE Delegation Order No. 0204-111,^{16/} which focuses primarily on domestic need for the gas to be exported, and the Secretary’s natural gas policy guidelines,^{17/} which presume the normal functioning of the competitive market will benefit the public.

The PANGC and Marathon proposal to export LNG, as set forth in their application, is consistent with section 3 of the NGA and Departmental policy. The concerns raised and incorporated by Unocal were addressed at length in Order 1473. In that proceeding, which was also opposed by two other users of Cook Inlet gas, the Department evaluated the adequacy of

¹³ 15 U.S.C. § 717b.

¹⁴ *Id.*

^{15/} In *Panhandle Producers and Royalty Owners Association v. ERA*, 822 F. 2d 1105, 1111 (D.C. Cir. 1987), the court found section 3 of the NGA “requires an affirmative showing of inconsistency with the public interest to deny an application” and that a “presumption favoring...authorization...is completely consistent with, if not mandated by, the statutory directive.” See also *Independent Petroleum Association v. ERA*, 870 F. 2d 168, 172 (5th Cir. 1989); *Panhandle Producers and Royalty Owners Association v. ERA*, 847 F. 2d 1168, 1176 (5th Cir. 1988).

^{16/} See 49 Fed. Reg. 6684, February 22, 1984. On January 6, 1989, certain functions including the regulation of natural gas imports and exports, were transferred from the Economic Regulatory Administration (a predecessor of FE) to FE. DOE Delegation Order No. 0204-127 specifies the transferred functions (54 FR 11436, March 20, 1989).

^{17/} See 49 Fed. Reg. 6684, February 22, 1984.

regional reserves to satisfy both anticipated local demand and the continued export of LNG. The record included several Cook Inlet supply and demand forecasts submitted by the parties and other published reports. Based on our evaluation of this extensive record, we concluded the five-year extension of the Applicants' long-term export authority would not adversely affect domestic gas use in the Cook Inlet area. We estimated the available supply of conventional natural gas between 1998 and 2009 would be 4,545 Bcf, and anticipated demand for the same period would be 2,847 Bcf. Even using the lowest supply and highest demand estimates of the protestors, we found supply would be more than sufficient to meet demand. In addition to our findings on regional need, we concluded, in Order 1473, that the extension of PANGC and Marathon's export authority would encourage the development of Alaska energy resources and would continue economic benefits to the Cook Inlet area and the State of Alaska as well as trade benefits of the long-standing relationship between the United States and Japan. Unocal and the other two protestors did not request rehearing of Order 1473.

Unocal complains the Department's approval of the two-year blanket authority requested in this docket will exacerbate the regional supply issues Unocal raised in Order 1473. However, the Department rejected those arguments in Order 1473, which approved a total export volume over the five-year extension of approximately 322 Bcf of LNG, compared with the 10 Bcf maximum requested here. Second, Order 1473 involved firm volumes, whereas both short-term and spot arrangements typically are interruptible or best-efforts transactions. Third, Order 1473 approved a five-year extension of a 30-year arrangement that would have ended in 2004. This proposal, however, is for two-year blanket authority (typically for arrangements under 30-day, 90-day, 6-month, and 1-year contracts), which if used and thus triggered within the next two

years, will expire before the Order 1473 extension begins. Fourth, sales would take place under the requested authority only if the Applicants have gas in excess of the volume required by their currently authorized long-term sales arrangements with Japan.

After considering all information in the record of this proceeding, and reexamining its findings in Order 1473, the Department finds that granting the Applicants blanket authority to export up to 10 TBtus (10 Bcf) of LNG over a term of two years for spot and short-term sales in the international market is not inconsistent with the public interest. The assessment took into account the potential effect the short-term LNG exports would have on Cook Inlet supplies when combined with the exports already approved. There have been no dramatic changes in the Cook Inlet supply picture since Order 1473 was issued and we conclude the record shows there is a sufficient regional supply of natural gas to satisfy local demand and the combined total of short-term and long-term LNG export demand. This blanket order authorizes transactions under contracts with terms of no longer than two years.^{18/}

ORDER

Pursuant to section 3(a) of the Natural Gas Act, it is ordered that:

A. Phillips Alaska Natural Gas Corporation and Marathon Oil Company (collectively, the Applicants) are authorized to export up to 10 Btus (10 Bcf) of liquefied natural gas (LNG) from Kenai, Alaska, to international markets over a two-year term beginning on the date of first export.

B. The motion of Union Oil Company of California (Unocal) to intervene, as set forth in this Opinion and Order, is hereby granted, provided that participation of Unocal shall be limited to

18 An export authorization for natural gas in cases not involving construction is categorically excluded by DOE from further documentation under the National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*) (*See* 40 C.F.R. § 1508.4 and 57 FR 15122, April 24, 1992).

matters specifically set forth in its motion to intervene and not specifically denied, and that the admission of Unocal shall not be construed as recognition that it might be aggrieved because of any order issued in this proceeding.

C. Within two weeks after deliveries begin, the Applicants shall provide written notification to the Office of Natural Gas & Petroleum Import & Export Activities of the date that the first export of LNG authorized in Ordering Paragraph A, above, occurred.

D. With respect to the LNG exports authorized by this Order, the Applicants shall file, within 30 days following each calendar quarter, reports indicating whether exports have been made. If no exports of LNG have been made, a report of "no activity" for that calendar quarter must be filed. If exports have occurred, the Applicants must report the following information: (1) total monthly volumes in Mcf; (2) the average monthly price for LNG exports per MMBtu delivered to each purchaser; (3) the destination(s) of the LNG exports; (4) the name of the purchaser(s); and (5) the estimated or actual duration of the agreement(s). [OMB No.: 1901-0294]

E. The notification and reports described in Ordering Paragraphs C and D of this Order shall be filed with the Office of Natural Gas & Petroleum Import & Export Activities, Fossil Energy, Room 3E-042, FE-34, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

F. The first quarterly report required by Ordering Paragraph D of this Order is due not later than July 30, 2000, and should cover the period from the date of this Order until the end of the second calendar quarter, June 30, 2000.

Issued in Washington, D.C., on April 10, 2000.

John W. Glynn
Manager, Natural Gas Regulation
Office of Natural gas & Petroleum
Import & Export Activities
Office of Fossil Energy